

The Political Economy of Port Institutional and Pricing Reform in South Africa

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COMPULSORY DECLARATION

This work has not been previously submitted in whole, or in part, for the award of any degree. It is my own work. Each significant contribution to, and quotation in, this dissertation from the work, or works, of other people has been attributed, and has been cited and referenced.

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LIST OF ABBREVIATIONS

ANC	African National Congress
BEE	Black Economic Empowerment
BOO	Build-own-operate
BOOT	Build-own-operate-transfer
BOT	Build-operate-transfer
BTO	Build-Transfer-Operate
COSATU	Congress of South African Trade Unions
DCT	Durban Container Terminal
DPE	Department of Public Enterprises
DTI	Department of Trade and Industry
EOT	Equip-operate-transfer
GEAR	Growth, Employment and Redistribution Policy
ISI	Import Substitution Industrialisation
NEDLAC	National Economic Development and Labour Council
NPA	National Port Authority
SACP	South African Communist Party
SAP	Port Administration Societies
SAPO	South African Port Operations
SAR&H	South African Railways and Harbours
SATAWU	South African Transport and Allied Workers Union
SATS	South African Transport Services
SOEs	State-Owned Enterprises
SPC	Special Purpose Company
TEUs	Twenty-foot Equivalent Units
THCs	Terminal Handling Charges

TNPA	Transnet National Port Authority
VAT	Value Added Tax

CHAPTER 1: INTRODUCTION

Section 1.1: Overview of South Africa's Ports

The late 1970's witnessed many countries in the developing world shifting away from earlier models of development which were built around Import Substitution Industrialisation (ISI). These countries were experiencing economic problems which are common to the application of ISI policy particularly, high cost domestic production and overvalued exchange rates (Rodriguez, 2003). In this regard, many developing countries moved increasingly towards export-led growth strategies and trade policies which encouraged private sector competitiveness in a global economy – a model laid out in the “Washington Consensus”. This model comprises a set of broad free market economic ideas which advocate macroeconomic stability, free trade, floating exchange rates and free markets to help improve economic welfare under uncertain conditions (Williamson, 2004).

In the case of South Africa, also a developing country, similar challenges were experienced with the adoption of the ISI policy. Gross Domestic Product (GDP) and investment rates were low, exports of goods and services were volatile and at times negative and the external capital account had been in deficit since the 1970's (Department of Trade and Industry [DTI], 2008). Furthermore, exports were highly concentrated around mineral commodities and the tariff regime was indiscriminately protective of the domestic industry (DTI, 2008). The ISI policy, coupled with the sanctions against apartheid resulted in low levels of productivity and high levels of unemployment in the South African economy.

While other developing countries were shifting to export-oriented trade policies, South Africa was faced with sanctions against apartheid which impeded its transition to the Washington Consensus agenda. It was only after its political transformation in 1994 that South Africa embraced a domestic version of the Washington Consensus agenda with the Growth, Employment and Redistribution (GEAR) policy of 1996 reflecting a clear statement of this. In terms of trade and industrial strategy, the central thrust of the

GEAR policy was to pursue employment creating international competitiveness, regional economic integration and expand market access through preferential trade agreements with industrialised countries. This process involved moving away from demand-side interventions including subsidies and tariffs which raised prices received by producers, to supply-side measures which lower unit costs and accelerate the progress up the value chain (Department of Finance, 1996: 12).

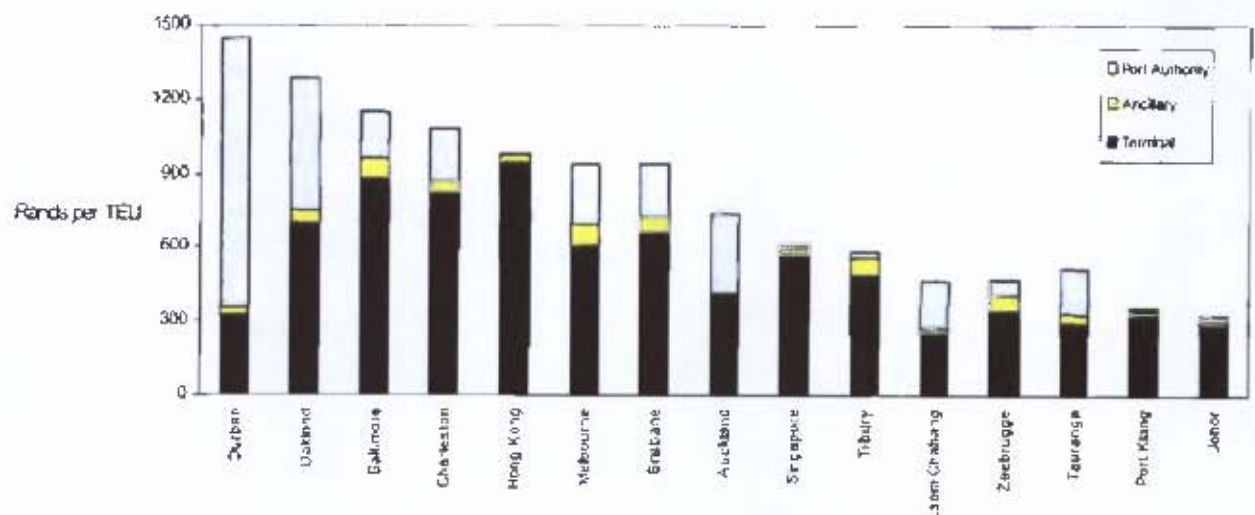
Cost effective and competitive ports are vital for an efficient value chain capable of competing domestically and globally. One might expect that strong efforts to address high prices and cost inefficiencies in South Africa's ports would have been part of the broader embrace of the GEAR policy. What actually took place with respect to port institutional and pricing reform has been altogether more ambiguous in South Africa and this dissertation explores these ambiguities.

Here below are three key issues which characterise the port system of South Africa:

- 1) South Africa's port waterfront charges are very high.

The graph below shows waterfront charges for selected global ports in 1998.

Figure 1: Total Waterfront Charges



Source: (Department of Transport, 1998 cited in Chasomeris, 2006: 108)

In a study by the Department of Transport, the international benchmarking of South Africa's ports showed that they are too expensive for their users. As indicated in the

graph above, in comparison with other Port Authorities, South Africa's port charges as exemplified by port of Durban are significantly high while other services and facilities are artificially low. Other developing countries represented in the graph are Malaysia (Port Klang and Johor), Thailand (Laem Chabang), Hong Kong and Port of Singapore (Singapore). The developed countries are: New Zealand, (Auckland and Tauranga), Belgium (Zeebrugge), England (Tilbury), Australia (Brisbane and Melbourne) and USA (Baltimore, Charleston and Oakland).

The charges in the graph are port authority charges which consist of light dues, vessel traffic service, pilotage, marine services, port charges (port dues and berth dues) and cargo dues. In South Africa, cargo dues constitute about 70 per cent of income to the port authority (National Economic Development and Labour Council [NEDLAC], 2008: 2).

"Cargo dues on all commodities, articles or containers (full or empty) are levied at all ports belonging to or controlled and managed by Transnet [South Africa state-owned transport conglomerate] this echoes the description of wharfage in previous years" (NEDLAC, 2008: 22). Cargo dues are levied in unit form per ton or Twenty-foot Equivalent Units (TEUs) for containers (NEDLAC, 2008: 22).

The other port charges represented in this graph are terminal charges which are cargo handling costs while infrastructural costs are represented within the Port Authority charges (Chasomeris, 2006: 108). The ancillary charges are other general port fees.

Not only were port prices high in South Africa, but the tariff structure hugely weighed in favour of the export of raw mineral commodities at the expense of the manufacturing sector. While the GEAR policy was initiated in 1996, it was not until 2013 that port tariffs for the export of manufactured goods were lowered by over 40 per cent. What this translates into is that port pricing reform has taken 17 years to align with South Africa's industrial strategy. The issue of port pricing will be further discussed in Chapter 4.

2) Significantly high port profits to Transnet

Transnet comprised five divisions namely; Portnet¹ (Ports), Spoornet (rail), Petronet (pipelines) Autonet (road) and South African Airways (Chasomeris, 2006:102). The table below shows the contribution of profit to Transnet after finance costs for all the companies under Transnet. The second table illustrates the same although this is after the split of Portnet into National Port Authority and Port Operations.

Figure 2: Transnet's Profits from 1993 to 2011

	1993	1994	1995	1996	1997	1998	1999	2000	2001
Spoornet	588	-	734	98	712	573	-136	84	604
Portnet	623	766	1111	1397	1709	1653	1383	1393	1913
SAA	-78	-	217	324	-323	-244	51	463	352
Petronet	112	-	144	180	273	321	392	335	265
Autonet	-33	17	20	23	22	8	-74	-	-
Fast Forward	-	-	-297	-433	-489	-322	-276	-169	-
Metrorail	-	-	-	-	-	41	54	118	163

Source: Transnet annual reports for various years

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Spoornet/Freight rails	-	400	-668	96	808	968	1271	1799	1916	1925
National Port Authority	2191	1632	2140	2659	3445	4346	4856	4512	3494	3990
Port Terminals	-	-86	348	841	892	1323	1208	750	313	728
SAA	-	-6	-8730	650	75	-	-	-	-	-
Petronet/pipelines	-	6197	239	19	345	444	579	509	127	475
Transwerk/Rail engineering	-	120	-	476	676	893	1069	304	121	784

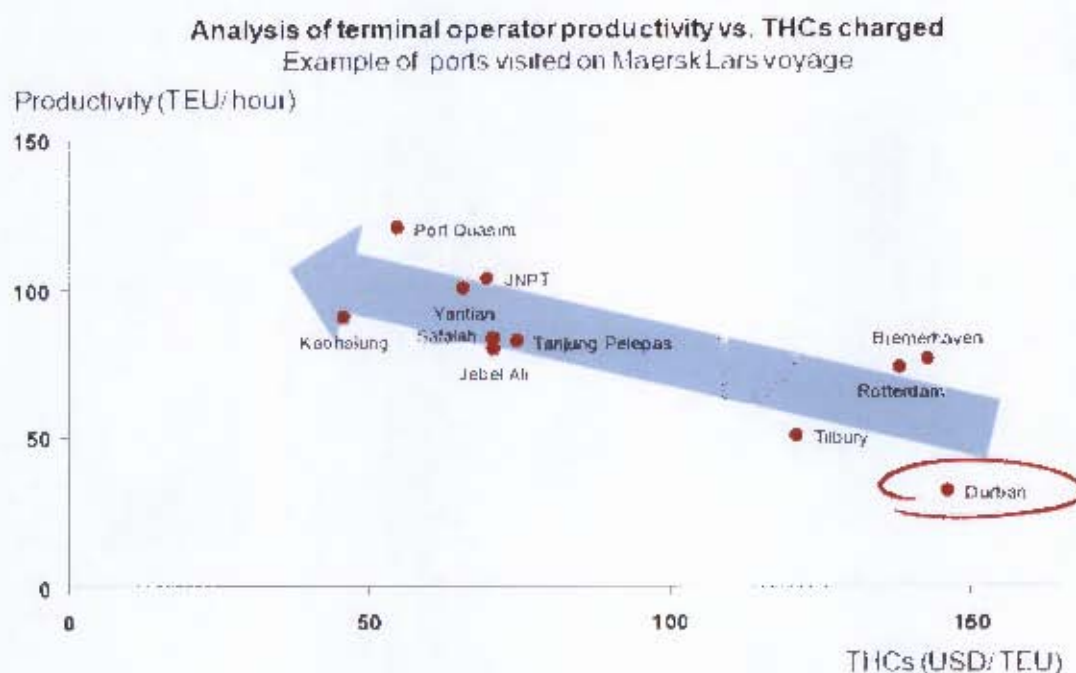
Source: Transnet annual reports for various years

In analysing Figure 1 and Figure 2; the high pricing of the ports and the profits to Transnet respectively, one immediately sees that the principal issue of South Africa's waterfront prices is rent extraction by Transnet.

3) Port productivity and performance

¹Portnet split into a landlord, the National Port Authority (NPA) and operations arm, South Africa Port Operations (SAPO) in 2002 (Department of Transport, 2002)

Figure 3: Productivity verses Terminal Handling Charges (THC) 2012



Source: (Transnet National Port Authority [TNPA], 2012: 16)

The benchmarking of Terminal Handling Charges (THCs) was conducted by South Africa's National Port Authority (NPA) in 2012². THCs were further analysed in relation to container terminal operator productivity in Twenty-foot Equivalent Units (TEUs) per vessel working hour.³ The task was performed using port calls by Maersk Lars' current voyage and this shipping line was selected due to its frequency to the port of Durban as well as the fact that her voyage includes large and vital ports in Europe, Asia and the Middle East (TNPA, 2012:14). The ports in the graph above are Port Quasim of Pakistan, Port Kaohsiung of Taiwan, Port Jebel Ali of the United Arab Emirates, Port Yantian of China, Port of Salalah, Oman, Port of Tanjung Pelepas of Malaysia, Port of Tilbury in England, Port of Rotterdam, Netherlands, Port of Bremerhaven, Germany and

² "Container operations are charged on a Terminal Handling Charge (THC) basis for which handling costs are aggregated to obtain a standard equalised THC for each type of container" (National Economic Development and Labour Council [NEDLAC], 2008: 17).

³ One way of measuring productivity at port is through measuring the number of containers lifted per hour to or from the vessel at the port. The graph therefore shows terminal handling charges in relation to productivity at the ports where productivity is measured in terms of container TEUs per vessel working hour.

Durban, South Africa. The graph above shows the port with high productivity having the lowest THCs amongst the benchmarked ports. Durban on the other hand, has low container terminal productivity and is expensive.

According to (TNPA, 2012: 15) the common complaints from shipping lines are that of the high port costs in South Africa especially when considering cargo handling performance and service levels at the ports. One possible remedy for this problem would be increased productivity through the introduction of private participation in order to lower costs—the global trend—which we will see in the next chapter. South Africa did embark on port reform in the late 1990's although, by 2008 the country completely backed off from this effort.

In view of the three characteristics above, the goal of this dissertation is to understand the disconnect between the commitment to a globally competitive industrial strategy and failure for at least two decades after that, to address the challenges of the ports. This dissertation will describe the evolution of the efforts to address low productivity and high pricing by looking at how and why Transnet adopted a highly constrained process of port sector reform to ensure that the inclusion of private participation did not disrupt its control over the ports. Not only did Transnet use high port prices to extract rents to cross-subsidise its loss making divisions but it also cross subsidised the mining sector of the South African economy. Cross-subsidisation of port profits to the mining sector can be attributed to the 'Mineral Energy Complex' a term coined by (Fine and Rustonjee, 1996). Despite the change in South Africa's industrial policy in 1996, large conglomerates in the mining and energy sector continue to influence policy in the country and this issue will be further discussed in relation to cross-subsidisation and the port reform experience in South Africa. This dissertation aims at addressing the above issues by identifying what exactly happened during port reform and why it happened as below.

An Overview of Port Reform: What Happened and Why

Port sector reform (both of the institutional arrangements and pricing) was very limited, and very slow.

(i) The reform process was initiated later than restructuring processes in other infrastructure sectors in South Africa (electricity white paper 1998 and telecommunications white paper 1996)-- as exemplified by the issuing of a ports white paper (only 2002), and of legislative change (only in 2005).

(ii) The implementation of reform also proceeded at a slow pace, as exemplified by:

- A failure to adjust prices to eliminate the rent extraction (from ports to Transnet), and across different segments of the economy such as from manufacturing to mining;
- A failure to implement the landlord model, except on very small margins; and
- A failure to put in place an independent regulator with the mandate to set port prices.

An explanation as to why port reform was this way is that, in a political economy of 'multiple principals', Transnet won sufficient autonomy from its principals to pursue an autonomy-seeking, financial independence strategy – and used cross-subsidies from ports to offset losses elsewhere. It was to maintain this autonomy that port sector reform was so slow.

Underlying this explanation is that rent extraction from ports has been part of a broader political economy equilibrium in South Africa which prioritises rent extraction and rent sharing over the creation of a competitive economy.

Section 1.2: Methodology

The conventional economic discourse on policy choices is to think of them through the lens of welfare economics and efficiency. This dissertation will not use this approach as it does not explain the policy outcomes of this topic. Conceptually, the hypothesis of the methodology used in this paper is that the outcomes we will soon observe are the result of strategic multi-stakeholder bargaining. The methodology for explaining my questions and addressing my key hypotheses is "process tracing" and "analytic narratives". To understand institutional change and variation, five scholars influenced by Douglas C. North used tools of economic institutionalism to investigate questions of governance of

the economy and polity, interstate relations and political economy in a book titled *Analytical Narratives* (Levi, 2002). The book provides the concept of institutions being formal and informal rules that influence behaviour by means of incentives and constraints (Levi, 2002).

Analytical Narratives

The key features of analytical narratives are summarised by (Levy, 2011) as below:

Rational choice, with game theory as an analytic platform: "In an effort to move from [description] to explanation, we move from 'thick' accounts to 'thin' forms of reasoning. We seek to highlight and focus upon the logic of the processes that generate the phenomena we study. In doing so, we use rational choice theory. We find game theoretic models particularly useful ways of exploring the validity of narrative accounts....We seek to construct the game that provides the link between the prominent features of the narrative and its outcome" (Bates et al, 1998 cited in Levy, 2011: 17).

Linking games and empirical research: "We seek to account for outcomes by identifying and exploring the mechanisms that generate them....By reading documents, labouring through archives, interviewing, and surveying the secondary literature, we seek to understand the actors' preferences, their perceptions, their evaluation of alternatives, the information they possess, the expectations they form, the strategies they adopt, and the constraints that limit their actions. We seek to cut deeply into the specifics of a time and place, and to locate and trace the processes that generate the outcome of interest" (Bates et al, 1998 cited in Levy, 2011: 17).

Deduction and induction: Analytic narratives "blur the conventional distinction between deduction and induction.... The(ir) construction is an iterative process...They depart from conventional notions of hypothesis testing. The dominant response to disconfirmation is reformulation not falsification.... We move back and forth between interpretation and case materials, modifying the explanation in light of the data, which itself is viewed in new ways, given our evolving understanding ...[so that] in the end we achieve a match between theory and case materials" (Bates et al, 1998 cited in Levy, 2011: 17)

- *Generating theory.* “Initially the theory is formed from the data; it is selected because it appears to offer a good fit. Rendered explicit, the theory then becomes vulnerable; it can be subject both to logical appraisal and to empirical testing” (Bates et al, 1998 cited in Levy, 2011: 17).
- *Disciplining the narrative.* “Theory places constraints upon the narrative; the account is constrained by the logic of the theory” (Bates et al, 1998 cited in Levy, 2011:17).
- *Modifying theory.* “The cases derive implications from theory; but when the case materials do not confirm their expectations, the authors respond by reformulating their models and by altering the way in which they think about the problem (Bates et al, 1998 cited in Levy, 2011: 17).
- *Post diction.* “When models highlight features of the data that hitherto have escaped attention; when they can be contradicted by the evidence; and when they predict relationships that must hold, if their equilibria capture the processes that generate the phenomena of concern – then we are well beyond mere exercises in curve fitting” (Bates et al, 1998 cited in Levy, 2011: 17).

Process Tracing

Process tracing is a tool used for theory testing and development. It is used to link observations in a case study in ways that form an explanation of the case (George and Bennett, 2005: 207). In a world with multiple interactions it is difficult to explain the outcomes of several independent variables and this tool helps researchers explain such outcomes where statistical methods can only manage to do so with great difficulty (George and Bennett, 2005: 224).

Within the framework of rational choice, process-tracing helps researchers construct detailed historical cases through empirical tracing of decision-making processes (George and Bennett, 2005: 208).

The logic of process-tracing is that it enables one to drill down to the details of the narrative, to look at multiple alternative hypotheses and to be able to reject some of

them but not others. Here below is a table which presents a series of hypotheses in groups that explain the outcome of port reform in South Africa. The reasoning behind these hypotheses and which ones can be rejected will become evident once the story is told in Chapter 3 and Chapter 4; and the concluding Chapter 5, teases out the implications for each. Next is Chapter 2, which analyses the global trends in port reform.

Box A: Hypotheses

GROUP 1: Multiple Principals Hypothesis

H1: Multiple principals as well as capture by strong SOE (Transnet) leveraging allies blocked reform.

GROUP 2: Technocratic Hypotheses

H2: Private participation and price rebalancing is bad policy.

H3: Failure to reform is as a result of poor management.

H4: Complexity and non-transparency of the pre-existing pricing and cross-subsidisation regime added to the difficulty of reform efforts.

GROUP 3: High-Level Politics Hypotheses

H5: Labour unions have veto within the ANC alliance and therefore opposed private participation and successfully blocked reform.

H6: Economic actors were resistant to productivity focused restructuring ('Mineral Energy Complex' and the unions) and have veto power.

CHAPTER 2: GLOBAL TRENDS IN PORT REFORM

Globalisation and trade liberalisation have over the past few decades generated a trend of institutional reform all over the world. It is for this reason that significant developments have been identified in transport and logistics technologies, changing the landscape of business operations in various ports of the globe. These developments have involved the change of ownership structure of ports from public to private, altering of the institutional structure of port services and changing port labour practises (World Bank, 2007). Global port reform is in line with neo-liberal ideas which emphasise limited public sector intervention in the national economy, increased privatisation and commercialisation of public enterprises.

Global trends in port reform provided the backdrop and framework for South Africa's port reform. This chapter discusses best practise in port reform and thereafter, showcases port reform experiences in Colombia where successful private participation in the ports has taken place, as well as Argentina where port reform has resulted in a mixture of management models but has still produced positive results. The discussion on pricing reform will come later in the dissertation. What is necessary first is to understand how a port operates and the next section of this chapter helps to do just that.

Section 2.1: Introduction to Ports and Port Functions

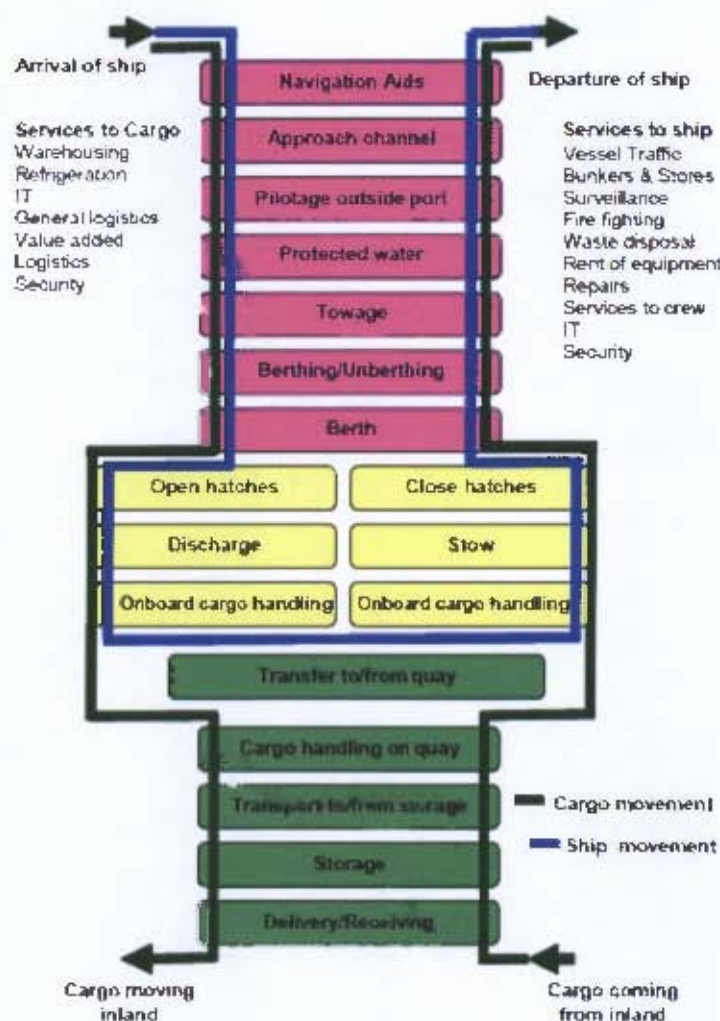
A port is a gateway to an inter-modal transport system connecting sea and land transport and it functions essentially to aid the transfer of cargo and passengers (Port regulator 2010: 13). Ports provide marine and cargo-working infrastructure facilities to port users who fall into two broad sets of economic actors—vessel owners whose assets utilise the former infrastructure and cargo-owners whose goods pass through the latter infrastructure with the use of cargo distribution as well as cargo- handling services

(Port Regulator: 2010: 13). The sequence of events that take place as a cargo- carrying vessel arrives and leaves a port will help highlight the functions of a hypothetical port.⁴

A vessel carrying 500 containers calls at the port of Cape Town to discharge and pick up more cargo before sailing. This vessel will first encounter port control and vessel tracking services. It will announce its arrival and ask for berthing information. While here the vessel consumes marine services associated with safe vessel tracking conduct and will either proceed to safe anchorage or be asked to proceed to the pilot boarding to await a harbour pilot. The latter step leads to an instruction to weigh anchor and approach the pilot ground. The tangible service used thereafter is pilotage service either by boat or helicopter. The vessel starts to use marine infrastructure before or after pilot boarding depending on the port in question. This intangible asset includes navigational aids such as breakwaters and fairways in optimal water depth. This infrastructure enables the vessel to safely enter and exit the port. Tug services are part of marine services that are determined by vessel size. Harbour tugs are provided at the entrance of the port so as to provide safe port entry and movement to an allocated berth.

⁴The port call example was adapted from an Economic Review of Participation in Ports Operations and Services in South Africa by the Port Regulator of South Africa (Port Regulator, 2010: 13- 15).

Figure 4: Schematic Representation of the Processes and Services to Ships and Cargo Moving Through a Port



Source: UNCTAD, 1995 cited in Port Regulator, 2010: 14

Our vessel is now within the port area and continues to travel through marine infrastructure such as dredged channels with the help of tugs and the pilot to the berth or quay allocated to it with appropriate water depth. Berthing services are provided by berthing personnel who secure the vessels mooring lines safely to the quayside. At this point, the vessel is ready for cargo discharge.

The land behind the berth is intangible cargo-handling infrastructure. It can also include road access and rail lines to the terminal area of the port. Without these assets, cargo-

handling activities cannot take place although the assets in themselves do not transfer cargo from the ship to the shore and vice versa.

The cargo working superstructure comprises various infrastructure including wharf sheds and cranes, bulk ship loaders and unloaders, stacking areas, intermodal interfaces and container gantries. A container vessel port, which is where our hypothetical vessel is going to dock, provides other superstructure such as container handling gantries to move standard freight containers between the ship and the shore. Cargo handling services such as stevedores enable the physical transfer of goods to and from the ships to warehouses, rail wagons or road vehicles.

Mentioned above are the core functions of a port although the functions also depend on whether a port is a full service port or a diversified port. The services of a port need to be tailored in such a way as to accommodate the ships that utilise the main terminals of a specific port area.

Box B: Categories of Port Assets

<p>Basic Port Infrastructure:</p> <ul style="list-style-type: none"> • Maritime access channels. • Port entrance. • Protective works, including breakwaters and shore protection. • Sea locks. • Access to the port for inland transport (roads and tunnels). • Rail connection between the hinterland and the port. • Inland waterways within the port area and connecting port areas with their hinterland <p>Operational Port Infrastructure:</p> <ul style="list-style-type: none"> • Inner port channels and turning and port basins. • Revetments and slopes. • Roads, tunnels, bridges, and locks in the port area. • Quay walls, jetties, and finger piers. • Aids to navigation, buoys, and beacons. • Hydro and meteorological systems. • Specific mooring buoys. • Vessel traffic management system. • Patrol and fire-fighting vessels. 	<ul style="list-style-type: none"> • Docks. • Port land (excluding superstructure and paving). • Access roads to general road infrastructure. • Rail connection to general rail infrastructure, and marshalling yards. • Dry docks for ship repair. <p>Port Superstructure:</p> <ul style="list-style-type: none"> • Paving and surfacing. • Terminal lighting. • Parking areas. • Sheds, warehouses, and stacking areas. • Tank farms and silos. • Offices. • Repair shops. • Other buildings required for terminal operations. <p>Port Equipment:</p> <ul style="list-style-type: none"> • Tugs. • Line handling vessels. • Dredging equipment. • Ship and shore handling equipment. • Cargo handling equipment (apron and terminal).
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Source: Adapted from (World Bank, 2007).

Section 2.2: Global Best Practise of Port Reform⁵

Port reform began around the 1980's during a time when most ports were becoming bottlenecks to efficient distribution chains due to congestion and poor service quality. The main reason for ports failure to respond to the increasing demand of globalisation is that most ports around the world were controlled by the central government. Central planning was often characterised by hierarchical planning, control and command structures which were slow-paced and rigid (World Bank, 2007: 71). The introduction of market-oriented policies in the 1980s led to decentralised port management which reduced government intervention towards port systems. Another reason for poor

⁵This section draws heavily on Module 3 of the World Bank Port Reform Toolkit, 2007.

services in the ports was government's inability and at times unwillingness to invest in expensive port infrastructure. This has over the years led to governments spreading investment risks through joint undertakings as well as relying on private investors to reduce ports' dependence on state budgets (World Bank, 2007: 71).

Port development is usually undertaken by the government in many countries with the argument that investments in port assets have strong direct and indirect multiplier effects on the whole economy. Furthermore, many governments believe that the commitment of public resources encourages commercial investments towards port development. Port operations on the other hand, according to (World Bank, 2007:75) are businesses in their own right and should be managed to achieve optimal utilisation of capital. In terms of the structure of port management and port development policy, there is a wide spectrum of institutional frameworks that range from one end, the "service port" in which full public control over planning, regulation and operations result. On the other end of the spectrum there lies the almost total absence of public control, ownership or regulatory oversight resulting in the "fully privatised port" (World Bank, 2007; Brooks and Cullinane, 2006). The past few years have witnessed the diminishing role of government in the ports industry although the total absence of public involvement still remains limited to specialised ports and terminals. Below is a brief description of four categories of port management that have emerged over time. These main port models are: the service port, the tool port, the landlord port and the private service port.

The Service Port Model

This is the characteristic port model of most developing countries before devolution pressures. This model comprises a port authority owning all assets and land as well as performing all port functions and regulatory activities. The port authority is usually under the Ministry of Transport and the Chairman is usually required to report directly to the Minister of Transport. The absence of private sector involvement means that the same organisation regulates, develops infrastructure and superstructure and provides operational activities (Brooks and Cullinane, 2006:408).

The Tool Port Model

This model includes private and public sector participation. The development and maintenance of port infrastructure is provided by the public sector port authority. All equipment owned by the port authority is operated by the port authority staff and this equipment may include quays, cargo handling equipment and forklift trucks (Brooks and Cullinane, 2006:408). The private sector on the other hand, operates small companies such as cargo handling firms. This port has similarities with the service port model in terms of public orientation and financing of ports.

The Landlord Port

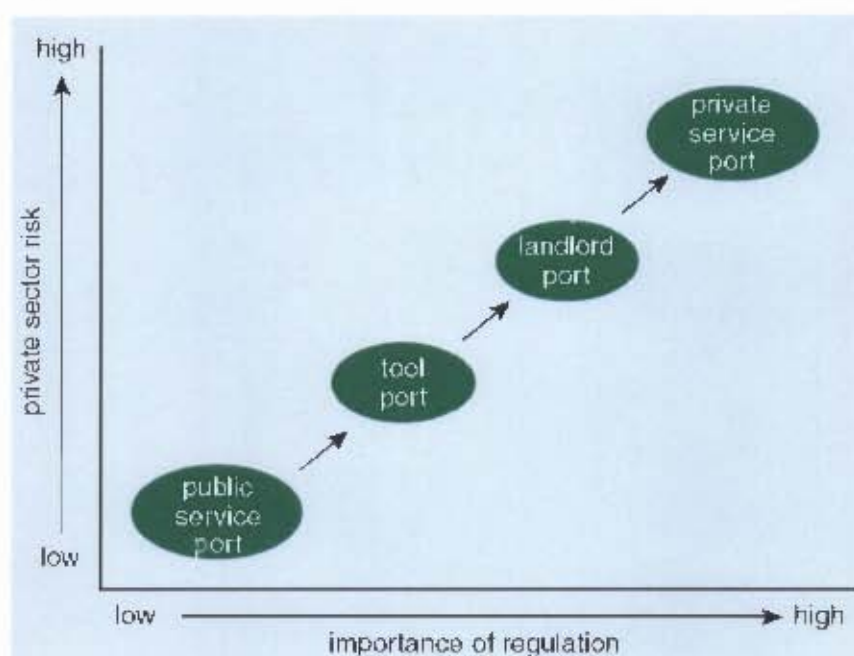
In this model, the port authority still owns the land but the infrastructure is leased to private operators. These private operators maintain their own superstructure including buildings, purchase and install the equipment on the terminal ground as well as hire dock labour.

Private Service Port Model

All operations, capital and regulation in this model, are provided by the private sector. The management of ports is market-oriented and investment in port operations is flexible. This approach could result in monopolistic behaviour as the public sector is not able to influence the activities of the ports (Brooks and Cullinane, 2006:409).

In terms of regulation of the port systems, the higher the competition of the ports in terms of pricing factors, the less regulatory intervention required. The figure below illustrates how the four port models array themselves on scales measuring private sector risk and the need for independent government oversight (World Bank, 2007: 15).

Figure 5: Public- Private Balance of Regulation and Risk



Source: (World Bank, 2007)

Port Reform Strategies and Options

In order to improve port organisation and operation, governments select from a variety of strategies. These strategies include modernisation of port administration and management, liberalisation or deregulation of port services, commercialisation, corporatisation and privatisation all depending on the requirements of the ports in question.

Box C: Port Reform Options

Modernisation of port administration	This enables the alteration of the organisation without changing national policy. It entails the introduction of suitable systems, working practices or equipment to port administration to improve port performance.
Liberalisation or deregulation of port services	This enables the participation of private companies by removing government rules and regulations that previously allowed only the public sector to operate.
Commercialisation	This enables a public port to have more

	autonomy in its decision making without transforming it into a private company. It adopts the accounting and management principles of private firms to become more efficient and profitable.
Corporatisation	The legal status of a public port enterprise is changed to the legal status of a private company although the public sector retains ownership. All assets and land leasing rights are transferred to this private company although land ownership remains with the port authority.
Privatisation	The most complex of port reform and involves "the transfer of ownership of assets from the public to private sector or the application of private capital to fund investments in port facilities, equipment and systems." (UNCTAD, 1998 cited in World Bank, 2007: 100).

Source: Compiled by Author from (World Bank, 2007: 100).

Options for Participation in Port Operations

In order to improve the performance and efficiency of ports, governments have the option of contracting out to the private sector, activities which were initially conducted by the public port management. This can take place by contracting out some operations through a tender-bid procedure. A separate contract for the management of the public port authority or terminal operator can also be awarded. This occurs when a port authority experiences continual poor management as well as inadequate financial stability.

A management contract is a practice in which the government agrees with a private sector operator to provide adequate and efficient service to all customers as well as employ the existing staff (World Bank, 2007: 110). The expiration of the contract is usually between three and five years leading to a renewal of the contract or it is awarded to another party (World Bank, 2007: 110). A management contract can also lead into the granting of a more extensive concession.

Governments are still involved in port management through public landlord port authorities in concession agreements. The term concession is referred to as:

“An arrangement whereby a private party (concessionaire) leases assets from a public authority for an extended period and has responsibility for financing specified new fixed investments during the period and for providing specified services associated with the assets; in return, the concessionaire receives specified revenues from the operation of the assets; the assets revert to the public sector at expiration of the contract.” (World Bank, 2001 cited in Port Regulator, 2010: 56).

Concessions allow governments to retain ownership of the port land and safeguard public interests while at the same time; relieve them from the financial burden and operational risks. The two main forms of concessions are lease contracts and concession contracts.⁶

➤ Leasehold Agreements

Leases provide a substantial amount of revenue for landlord ports and usually only land or warehouse facilities are leased. Berthing fees are paid during instances where the port authority leases its berths. Flat rate and shared revenue leases are the two main leases commonly used for multiuser and single-user terminals or berths. The lessee has the right to use a fixed asset for a specific period of time in exchange for periodic payments of a fixed amount for a flat rate lease. The shared revenue lease on the other hand involves the lessor giving the lessee the right to use a fixed asset for a fixed period of time although in exchange for a variable amount of money. There is a minimum payment regardless of the level of activity at the port but no maximum payment. This lease agreement enables the port authority to maximize employment levels, revenue and throughput while the lessee benefits from any additional activity after minimum throughput levels are attained (World Bank, 2007: 112).

⁶Lease contracts refer to when an operator engages in a long-term on port land and is responsible for superstructure and equipment while the concession contract refers to a contract in which the operator covers investment costs and assumes all commercial risks (World Bank, 2007: 112).

➤ Concession Agreements

As mentioned earlier, concession agreements enable the transfer of investment costs from the public to the private sector. Build-operate-transfer (BOT) schemes often stem from concession agreements. These schemes are a specialised form of concession designed to increase private financial participation in the construction of port superstructure and infrastructure without changing the landlord structure of the port. They are specific agreements between the port authority and the special purpose company (SPC) created by the concessionaire to construct and operate a port development. The ownership of the assets is retained by the port authority while the commercial risks of providing and operating the assets is moved to the private concessionaire. Other schemes like BOT include Build-own-operate (BOO), Equip-operate-transfer (EOT), Build-Transfer-Operate (BTO) and Build-own-operate-transfer (BOOT) (World Bank, 2007:118).

Above is the general overview of port reform strategies and options provided by the World Bank to assist countries move towards institutional reform of ports around the world. The reform process usually needs to be built up from a near zero basis and therefore the tool kit was designed to provide background information that would serve to assist reforms in various countries. The next section of this chapter will provide examples of two countries which undertook port reform. This is so as to put the above tools and methods of reform into perspective. We will look at reform in Colombia where successful private participation in the ports has taken place and Argentina where port reform has resulted in a mixture of management models.

Colombia

In the early 1990's four public ports in Colombia were concessioned using public-private partnerships (Gaviria, 1998 cited in Farquharson et al, 2011: 5). This reform was initiated in order to address structural problems of poor productivity, high pension costs and increase competition. The concessionaires were given 20-year concessions in which they were responsible for managing each port and contracting with port operators for the use of the ports (Gaviria, 1998, cited in Farquharson et al, 2011: 5).

As a regulator for concessions, a General Port Superintendent was established, laws were established to abolish restrictive labour and stevedoring services were allowed to compete in each port freely (Gaviria, 1998 cited in Farquharson et al, 2011: 5). Furthermore, Colpuertos, a former public port authority was dismantled and a new pension fund was established in order to cover labour retrenchment.

The result of port reform in Colombia is such that there has been a strong increase in productivity and decrease in user fees. Competition of stevedoring and between ports has increased; there are attractive returns to the concessionaires and a consistent flow of revenues to the government through payment for the leasing of port facilities (Gaviria, 1998 cited in Farquharson et al, 2011: 5).

Concessionaires have continued to increase private investment in container cranes and shore side equipment as encouraged by evidence of success in the port reform of Colombia.

Box D: Performance Improvements since Private Concessioning in 1994: Port of Colpuertos (Colombia)⁷

PERFORMANCE MEASURE	COLPUERTOS (1993)	SPRC (2003)
Containership waiting time	10 days	< 2 hours
Containership turnaround time	72 hours	7 hours
Gross productivity/hour	7 moves/ship hour	52 moves/ship hour
Berth occupancy	90 percent	50 percent
Cost per move	\$984	\$224
Bulk cargo productivity	500 tons/vessel/day	3,900–4,500 tons/vessel/day
Hours worked per day	18	24
Cargo dwell time	30+days	2 days
Port costs	\$984/per move	\$222/per move

Source: (Kent and Hochstein, 1998 cited in World Bank, 2007:2).

⁷ The former national public port entity is COLPUERTOS and Sociedad Portuaria Regional de Cargagena (SPRC), is a regional port entity resulting from the reform process.

Argentina

Before the early 1990's, Argentine ports were characterised by major corruption issues, insufficient investment, high tariffs combined with economically irrational subsidies, a messy institutional situation and declining traffic (Serebrisky and Trujillo, 2005: 192). Port reform in Argentina began in 1992 with an agenda to improve service quality and efficiency as well as reduce public service provision in the ports. Within 5 years a 50 per cent decrease in container terminal handling price was achieved in the most important ports of the country (Port Regulator, 2010: 77).

Argentina has 40 public ports under provincial management and one port named Port of Buenos Aires administrated by the National government. Thirty ports in Argentina are private ports and mainly specialise in industrial products and grain with importance in general cargo increasing steadily (Port Regulator, 2010: 77).

In 1992, the freedom to establish tariffs and abolishment of labour agreements which hindered productivity in port operations was achieved by the liberalisation of all contractual stevedoring companies as well as deregulation of pilotage and towing services. Any operator is allowed to enter the port sector, build, manage and operate a port for commercial, public, private, recreational or industrial use. All what is required of the operators is compliance with the standard supporting service requirements such as environmental regulations and customs (Port Regulator, 2010:77).

Effective decentralisation of management and decision making power enabled the transfer of small ports directly to Provincial Governments and major ports such as Bahia Blanca, Santa Fe and Buenos Aires Provinces but subject to the Sociedades de Administración Portuaria (SAP-Port Administration Societies) which are private entities in charge of maintenance of ports infrastructure and common use areas. SAP receives tariffs for infrastructure and fees from concessionaires and the profits are used to invest into the ports. Some of the Provinces have decentralised themselves to municipalities resulting in the closure of a lot of small ports considered redundant by the Provinces (Port Regulator, 2010:77).

Each port has adopted the best model to its preferences and constraints and this has led to a wide spectrum of management modes varied from centralised provincial systems to autonomous administrations. Full concessions have been granted to private operators in some cases and inter-port competition has reduced the need for price regulation processes.

There is evidence that reforms have paid off so far. Argentine ports allowed a fourfold increase in container traffic from 249,000 TEUs in 1990 to 1, 070,000 TEUs in 2000 (Serebrisky and Trujillo, 2005: 192). What Argentina lacks is an independent port regulator to monitor the activities performed in the ports. Below is a snippet of the results of Argentina's port reform:

Box E: Selected performance indicators for Port of Buenos Aires

Indicator	Before 1993	1996
Cargo (thousands of tons)	4,000	6,000
Containers (thousands of TEUs)	300	540
Capacity (thousands of containers per year)	400	1,000
Operational area (hectares)	65	95
Productivity (tons per worker per year)	600	3,000
Average stay for full containers (days)	2.5	1.5
Cost for container imports (\$ per ton)	450	120
Port tariff for exports (\$ per ton)	6.7	3.0
Port tariff for imports (\$ per ton)	2.1	1.5

Source: (Colombia General Port Superintendent, 1997 cited in World Bank, 2007: 3)

These are the global trends in port reform. The next chapter digs deep into the evolution of institutional port reform in South Africa.

CHAPTER 3: SOUTH AFRICA'S TURBULENT INSTITUTIONAL REFORM PROCESS

Section 3.1: The Rise and Fall of the Effort to Bring Private Participation into the Port Sector

As of the late 1990s, South Africa appeared to be embracing a model of port reform which involved substantial private participation. However, by 2008 it had backed off entirely from that effort. To understand what happened, we will look carefully at the sequence of decision points, and the preferences and actions of the relevant stakeholders.

Ordinarily, in examining the design and implementation of new policies, the presumption is that the policy design is coherent, set by a single, well-defined principal and then, implemented more or less effectively. An alternative preposition, laid out conceptually by (Khan, 2010) and (Levy, 2014) is that in some circumstances there can be multiple principals, with the eventual policy decisions as an outcome of contestation between them. As this chapter will demonstrate, the latter is a better depiction of the reality of South Africa's policy making vis-à-vis private participation in the ports.

By analysing the interaction among the principals and agents of port reform in South Africa—what exactly happened and the outcome, we will be able to learn something about the political settlement of the country through the manner in which the game played out.

(Khan, 2010: 4) provides a good concept of political settlements and how they influence the evolution of institutions in developing and developed countries. According to (Khan, 2010) “A *political settlement* is a combination of power and institutions that is mutually compatible and also sustainable in terms of economic and political viability. Institutions and the distribution of power have to be *compatible* because if powerful groups are not getting an acceptable distribution of benefits from an institutional structure they will strive to change it. But the compatibility also has to be *sustainable* because institutions, both formal and informal, have to achieve the minimum levels of economic performance

and political stability that are required for the reproduction of particular societies” (Khan, 2010:4).

Depending on the type of political settlement, if the benefits obtained by powerful groups of the society are low, these groups will strive to change institutions even through conflict, until they are satisfied or they give up (Khan, 2010:4). During the process of contestation, the compatibility between power and institutions can lead to either an unviable political settlement, where change can come about through the evolution of institutions or the organisation of power. Political settlements are continuously evolving in all societies but they differ in developing and developed countries.

According to (Levy, 2014: 28), there are early-stage regimes with dominant political leadership and others where political leadership is selected competitively. There are also dominant and competitive categories which are early and late-stage regimes. In a dominant political settlement, there is a huge gap between violence potential of the rulers and the opponents. It takes an extraordinary commitment level for the opponents to challenge a rulers’ strong grasp on power. At ‘equilibrium’ the ‘principal’, can govern by engaging others in the country as ‘agents’ (Levy, 2014:39). In a competitive political settlement, there is a narrower gap between the violence potential of rulers and opponents. It takes a much lower level of commitment for opponents to mount challenge against a ruling party with strong excluded factions for example. In equilibrium, the rulers respect rules of the game provided by the competitive settlement through an agreement among principals (Levy, 2014: 40).

Now within these political settlements are institutions in which ‘actors’ (organisations and individuals) interact within institutional ‘rules of the game’ which constrain their actions (Levy, 2014: 31). These actors interact differently--depending on the political settlement and their preferences—to attain rents—which are “returns which exceed the opportunity cost of resources which might otherwise be deployed in a competitive market” (Levy, 2014: 34).

Our next exercise will demonstrate through the lens of institutional economics and political settlements, what played out in South Africa's effort towards institutional port reform but before we proceed to that, the next section helps us understand where the ports are coming from in terms of institutional arrangements prior to reform.

Section 3.2: A Brief Background of Port Institutional Arrangements in South Africa

With the unification of the colonies in 1910, the South African Railways and Harbours, (SAR&H) was established. This state department offered an integrated national transportation system of air, road, rail, and pipeline and also owned and controlled the seaports of the Republic of South Africa (Wiese, 1981:26). Both harbour and railway authorities were unified due to conflict among the colonies as well as due to inter-port competition. The SAR&H was regulated by the law since 1910 to run on sound business principles generating revenue to sustain itself. As a semi-government organisation, SAR&H provided a central administration, planning, coordination and operation of the transport services mentioned above. A uniform tariff structure was therefore established which led to the decrease in inter-port competition. The tariff structure was created in such a way as to provide cheaper transport for industrial and agricultural sectors (Giladi, 2003 cited in Chasomeris, 2006:101) which was in line with the import substitution trade policy enacted at the time. It was during this time that the inception of cross-subsidisation of surplus profits obtained from harbour activities began to be used to cover losses incurred by railways (Jones, 1988 cited in Chasomeris, 2006: 102).

A business enterprise wholly owned by the state, South African Transport Services (SATS) was established by the South African Transport Services Act of 1981 which replaced the existence of SAR&H. This new business entity was created with changes to port pricing and governance policy and in 1982 the physical capital of the ports was placed under the control of the new administration. Rather than just paying attention to the agriculture and industrial sector, the Act required that the transport needs of the whole country be taken into consideration. To avoid demarcation problems of ports and railways, SATS ensured that all cargo functions fell under port administration (Jones, 1988 cited in Chasomeris, 2006: 102). With the uniformity of port tariffs which did not

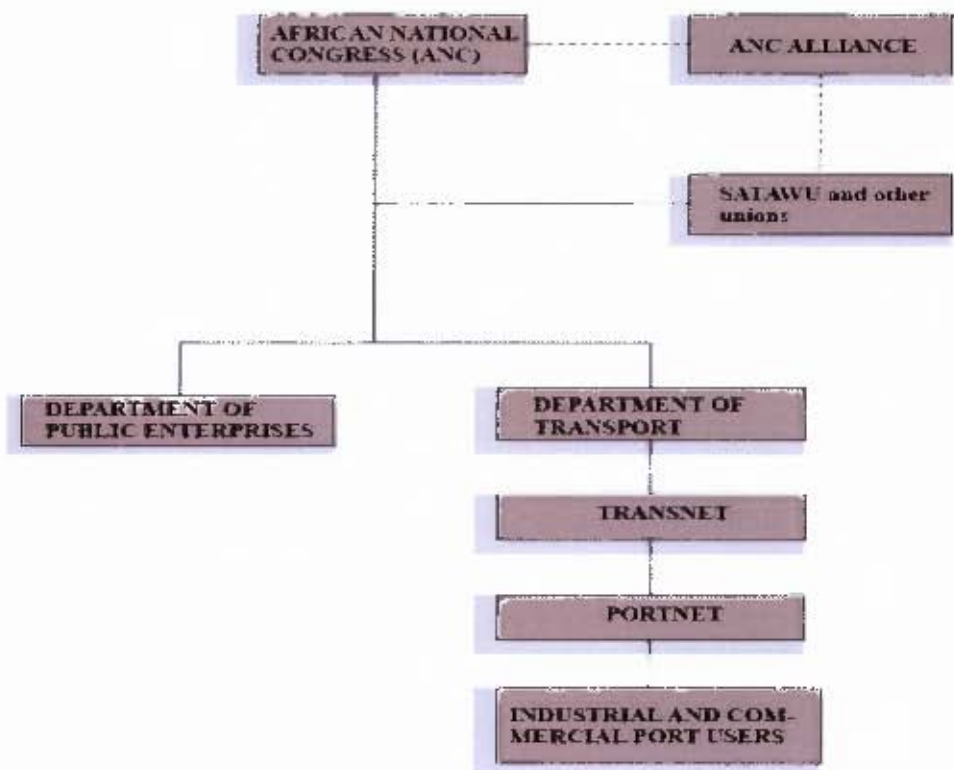
take into consideration the commercial differences of the ports, it was difficult for SATS to operate according to business principles. Although the ports experienced improved profits, there was still an issue of inter-port and inter-modal cross-subsidisation.

In the 1980's a commission by the Department of Transport forming one of the De Villiers reports, revealed that the strategy of SATS entailed cross-subsidisation of profits, competitive advantage was not utilised adequately and; return on capital was inconsistent with investment utilisation (De Villiers, 1986 cited in Modubu, 2009: 3). Furthermore, the strategy was redundant as the market demand for transports services had radically changed since the initial establishment of the transport administration. The legal structure of SATS was deemed inadequate to operate as a commercial entity and required necessary revision.

The results of the De Villiers commission led to the transformation of SATS into a business enterprise. In 1989 the Legal Succession to the South African Transport Services Act gave effect to some of the proposals presented in the De Villiers report. This Act established a public company known as Transnet Limited. The sole shareholder of Transnet is the state and its rights reside with the Department of Public Enterprises, while those of the Corporation lie with the Department of Transport (Transnet, 1991).

Section 3.2.1: Introducing the Stakeholders

Figure 6: An Organogram of Stakeholders Involved In the Efforts to Introduce Private Participation to the Ports



Source: Compiled by author.

The diagram above shows the stakeholders that were involved in the institutional reform of the ports. South Africa is currently under the rule of the African National Congress (ANC) and under this bracket are the ANC alliance, the Departments of Public Enterprises and Transport as well as labour unions such as the South African Transport and Allied Workers Union (SATAWU). The ANC is a political party but in principal governs in an alliance with the South African Communist Party (SACP) and Congress of South African Trade Union (COSATU).

The Department of Public Enterprises (DPE) as mandated by the then President of South Africa, Thabo Mbeki, initiated a restructuring program in 2000 which was designed around strategies and options to maximise shareholder interests of State-Owned Enterprises (SOEs). The main strategy for this program was the introduction of the private sector to SOE operations through concessions and private-public

partnerships. It being the shareholder representative and oversight of government for SOE's including Transnet, DPE's role in the reform process was centred on the above mandate which would increase the effectiveness and efficiency of SOEs including the port company under Transnet.

The Department of Transport is committed to the development of the transport system in South Africa. It is within this context that its role was to develop and maintain the national policy on the commercial ports as we shall see below. South African Transport and Allied Workers Union (SATAWU) and other unions acted as opponent's to reform efforts ideologically and as we shall see in the next sections, their preference was to retain jobs after the introduction of the private sector.

Transnet is the umbrella transport SOE under the Department of Transport and the Department of Public Enterprises. Further analysis of the governance structure of Transnet goes beyond the scope of this dissertation. Such analysis would be highly desirable. It would enable us to delve deeper into understanding the specifics of the arrangement of the multiple principals of Transnet, which have different objectives from one another.⁸

Portnet was a division of Transnet in charge of the ports. As we shall observe in the next sections, its actions present us with the understanding that in its capacity, Portnet agreed to a segmented strategy of a National Port Authority (NPA) and operations arm South African Port Operations (SAPO) in order to increase port productivity as well as returns to itself (here meaning the NPA) and its shareholders. On the other hand, during the adoption of port legislation, the NPA was against the introduction of a Port Regulator. The introduction of the Port Regulator was seen as a threat to NPA as it would substantially decrease the powers of the Authority. In this view, the NPA's actions are mixed and we will see how this is played out in the sections to follow.

⁸According to (Levy, 1986: 77), the various agents of the state see their mission as different from one another thus multiple principals can create space for management to trade off against each other in order to pursue their goals. We will see evidence of such interplay among these players in this as well as the next chapter.

The industrial and commercial users of the ports are involved in the shipping of products for business. For these actors, the introduction of private participation would certainly improve on the productivity of the ports which would increase their returns.

With the introduction of the stakeholders, we need to know the key decisions that were made in the effort to introduce private participation in the ports.

The key decision points made in line with private participation in the ports sector of South Africa were as follows:

- *The seeming embrace of private participation*
- *The path to and production of the White Paper*
- *Concessioning legislation*
- *The National Ports Act of 2005*
- *The experience with private participation subsequent to 2005*

The tables below provide a summary of what we learn from the blow by blow actions by stakeholders on these key decision points in Section 3.3.1 to 3.3.5 by using the methodology discussed in Chapter 1, Section 1.2 on analytical narratives and process tracing. Through 'deduction' we identified the hypotheses which seem to explain the policy outcomes of this analysis and now through 'induction' of the analytical narrative, this chapter looks to reformulate and iterate the case materials from interpretation. This exercise will in the end generate the theory which matches with the case materials presented in Chapters 3 and 4 to "form equilibria of relationships and the processes that generate the phenomena" (Bates et al, 1998; Levy, 2011).

To put this differently, here is what chapter 3 does:

- It gives summarised tables of the stakeholders who were for and against private participation;
- It examines the specific decision processes surrounding private participation (1996-2010) to learn what the de facto preferences are of each of the stakeholders and;

- It looks at the outcome of the decision process to learn the de facto relative strength of the different stakeholders.

Box F: Stakeholders for Private Participation

Stakeholders	For Private participation	De facto Preferences for Private Participation	Key Actions
1) Department of Public Enterprises	For	To restructure the ports as required by the mandate to restructure state-owned enterprises. This would increase port productivity which would increase shareholder benefits.	<p>-Pushed for port restructuring but lost to Transnet (See Sections 3.3.2.1, 3.3.2.2, 3.3.2.4, 3.3.2.5 and 3.3.3.1, 3.3.3.2, 3.3.3.4.1, 3.3.6)</p> <p>-Demanded an expedited process for the inclusion of private sector (See Section 3.3.3.1)</p> <p>-Bargained with the labour unions to prevent protests and retain jobs (see section 3.3.3.4.1 and 3.3.3.6)</p>
2) Department of Transport	For	To reduce government's direct involvement in the provision and operation of services and	- Spearheaded the White paper on National Transport Policy 1996 (See Section 3.3.1.1)

		<p>infrastructure which would enable a more competitive environment and increase efficiency, create jobs and reduce cost of doing business at the ports (Department of Transport, 1996).</p>	<p>-Organised a committee to establish a draft ports policy framework (<i>See Section 3.3.2.1</i>)</p> <p>- Organised the Draft National Ports Bill and the Ports Act (<i>see Section 3.3.3.4.2</i>).</p>
3) Industrial and commercial port users	For	<p>Private participation would increase productivity at ports which would promote increased profits due to lower cost of shipping as well as increased profits through concessions.</p>	<p>Participated in establishment of ports policy (<i>See Section 3.3.2.1</i>).</p> <p><i>Demanded prompt reform to improve productivity (See Section 3.3.2.1).</i></p> <p>Entered into partnerships with Black Economic Empowerment (BEE) enterprises to benefit from concessions (<i>see Sections 3.3.2.3 and 3.3.3.5</i>)</p>

4) Portnet	For <i>(Actually mixed see next Box G, Row 6 for actions AGAINST)</i> .	<p>Private participation would:</p> <ul style="list-style-type: none"> - reduce reliance on Transnet, parent company which would in turn enable the retention of profits made by Portnet; - increase revenues coming to Portnet which would enable infrastructure development and would increase productivity as well as lower costs at the ports. 	- Agreed to split Portnet into authority and operations (See Section 3.3.1.2, 3.3.3.2)
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Box G: Stakeholders against Private Participation

Stakeholders	Against Private participation	De facto Preferences for Private Participation	Key Actions
5) SATAWU and other labour unions	Against (with some qualifications).	Opposition was both because workers were likely to lose jobs once private sector was introduced and an ideological opposition to private participation but were seemingly willing to negotiate.	Protested; demanded participation in policy discussions and; managed to negotiate with government for job retention after private sector introduction to ports (See Sections 3.3.2.2, 3.3.2.4, 3.3.3.1, 3.3.3.2, 3.3.3.4.1, 3.3.3.5 and; 3.3.3.6)
6) Portnet	Against (Actually mixed see previous Box F, Row 4) for actions FOR)	The Port Regulator as the Authority would disrupt the National Port Authority from being its own regulator and its ability to maintain/increase port tariffs which would increase its revenue.	Stood against legislation in terms of having a Port Regulator (See Section 3.3.3.3)
7) Transnet	Against	To acquire policy and financial independence from its principals in order to cross-subsidise profits from the ports to loss making divisions.	-Constrained the reform process UNTIL the idea of private participation was completely taken off the table (see Section 3.3.1.2, 3.3.2.1, 3.3.2.5, 3.3.3.3, 3.3.3.4 and 3.3.4.1,

			3.3.4.2).
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Section 3.3: Evolution of Efforts to Address Low Productivity in the Ports 1994 – 2010

As mentioned earlier, in order to deal with issues of low productivity at the ports, the South African Government embarked on a reform process which included substantial private participation. In 1996 the Department of Transport created the National Transport Policy which resulted in the establishment of the White Paper for Commercial Ports Policy in 2002. In 2000, the Department of Public Enterprises was mandated to restructure State-Owned Enterprises and with this came the restructuring of Transnet. This process involved privatisation of entities, private-public partnerships and other strategies in order to increase the competitiveness of the developmental state. In order to introduce private participation in the ports, Portnet was split into a landlord and operations arm NPA and SAPO respectively in 2002 following the White Paper on Ports Policy. It was also envisaged that NPA was to be corporatized as a separate entity outside Transnet—this presented problems for Transnet as well as its workers.

The next sections will illustrate blow by blow exactly what transpired in the efforts to introduce private participation. We will see the interplay among actors who were for and against this effort and understand the de facto preferences for the various actors at particular time periods around the key decisions made towards this effort.

Section 3.3.1: The Seeming Embrace of Private Participation—1994 – 1999.

Section 3.3.1.1: The 1996 transport white paper. After South Africa's political transformation in 1994, the Department of Transport embarked on a policy review project. This project led to the tabling and approval of the White Paper on National Transport Policy in 1996. The policy intended to reduce government's direct involvement in the provision and operation of services and infrastructure to enable a more competitive environment (Department of Transport, 1996).

In relation to the ports, the White Paper highlighted that the trade sanctions of the apartheid legacy left the ports with a predominance of casual workers over permanent dock labour force, production inefficiency and high tariffs and in order to address these issues, the National Transport Policy White Paper proposed the following:

- The establishment of a port authority with responsibilities for the development and maintenance of port infrastructure and the function of administering the port infrastructure to ensure the long-term developments benefit the needs of the economy; furthermore, the port authority was to regulate the operations of the ports by controlling tariffs and service standards in monopolistic situations, provide cost recovery basis as well as essential port services which the private sector would not be willing to take up (Department of Transport, 1996);
- The port authority would be independent of any operating entity (Department of Transport, 1996); and
- The port authority was to be regulated as well by a Port Regulator (Department of Transport, 1996)

(This section shows us the de facto preferences of the Department of Transport being the establishment of a competitive economy with less government involvement. Within this framework, the ports would see improved productivity through the inclusion of the private sector, monitored by a Port Authority. The increased participation with regulation would boost returns to the economy (see Box F, Row 2)).

3.3.1.2: Some early tensions. In 1997, Transnet announced the idea to split Portnet into a port authority and an operations arm. Transnet saw it necessary to concession port operations to the private sector but unbundle Portnet carefully enough not to disrupt the cash flows Transnet was receiving from its wharfage. This would involve the port authority remaining under Transnet to ensure the earnings from Portnets wharfage (Chalmers, 1999: 2).

In 1999 the views of Portnet were such that, according to Portnet Manager, Robert Childs, the company was in favour of surrendering management of the ports to the private sector. Privatisation would be conducted through awarding of licenses and concessions by the port authority (South Africa: Port Privatisation Marches On, 1998) and this strategy would meet the demands of investment backlogs from the apartheid

era (Jenvey, 1999). The Port of Durban was seen to be the pilot project for the initial concessioning efforts.

At a National Maritime conference in March of 1999, Childs explained the reasons for port sector reform as Transnet being the Port Authority in terms of the Legal Succession to SATS not having regulatory powers to construct new ports. On the other hand, Portnet as supplier of port services could not act as player and referee when allowing and regulating competing port services (Jenvey, 1999). He further mentioned that Transnet did not want to privatise the ports to establish private monopolies and that the port authority solution would only be feasible once Transnet's debt was resolved (Jenvey, 1999). Transnet had inherited debt from its predecessors (SAR&H and SATS) through financial commitments it assumed when the Legal Succession Act of 1989 was enacted (Van Niekerk, 2002: 5). Only after the debt issues were resolved could Transnet embark on the introduction of private participation in the ports.

(In this section we witness two actors, Transnet and Portnet. Transnet's de facto preference here is to retain the ports in order to extract rents for debts it inherited from its predecessors and private participation would disrupt this process for Transnet (see Box G, Row 7). As for Portnet, its de facto preference is to improve productivity of the ports through private investment which would in turn; increase profits for the company (see Box F, Row 4)).

Section 3.3.2: The Path to and Production of the White Paper on National Commercial Ports Policy 1999 – 2002.

This section shows actions by the Department of Public Enterprises, the workers unions, international shipping companies, Transnet, Portnet and the Department of Transport in safeguarding their interests towards the ports. It is quite clear from this section which stakeholders were for and against private sector inclusion.

3.3.2.1: Momentum builds for reform, 1999-2000. In March of 1999, Transnet was to broaden its participation in port governance particularly national policy, legislation and restructuring by setting up a formal advisory national ports forum consisting of all significant stakeholders (Chalmers, 1999a: 1).

Portnet was also preparing itself for the segmented approach of port operations and landlord. In a leaked internal memorandum on reshaping Portnet, it was indicated that South Africa's ports faced infrastructure backlog, had no formal policy or legislation to govern the ports system and that splitting the two divisions would provide for focused management and a chance to improve the skills of the two divisions. This new structure would enable the future restructuring of operations, the improvement of operational performance and consistency with governments thinking as set out in the transport white paper (Chalmers, 1999a: 1).

The move to split Portnet was discussed with all major unions including South Africa Transport and Allied Workers' Union (SATAWU) and Technical Workers' Union who asserted that they supported the reform in principle and expressed the desire to become more involved in discussions on port reform in future (Chalmers, 1999a: 1).

In April, 2000, an International Maritime Conference was held in Durban. Speaking at the conference was Derek Lawrance chief executive of Ladit Enterprises, a shipping company. He expressed the need for port reform and stressed that the system was showing signs of its apartheid history when policy was inward looking during the time of international isolation. Lacking natural harbours, the country built Richards Bay to export coal and Saldhana for iron and steel to generate foreign exchange and the outcome of this was the development of a world-class transport system. He continued, "Extensive railway network with low density was not world class and the government taxed the ports to subsidise the railways, a system still in place" (Officials urge ports to revamp system, 2000). He also pointed out that while the government was confident about its plans for privatisation, the progress in Transnet had been slow. According to Lawrance a transformation of the racial composition of management led to the appointment of managers with little experience and the lack of money and debt in the company led to Transnet making erratic decisions. Lawrance warned of the trade-offs between economics and politics mentioning that South Africa had a history of developments for political reasons only to realise that they are not financially viable (Officials urge ports to revamp system, 2000).

Other shippers at the conference voiced their concerns about excessive delays for ships and cargo at the port, high wharfage charges, extra penalties on high-value export goods, high ocean transport freight costs and transit time (Officials urge ports to revamp system, 2000).

In response to the shippers complaints, Transport Minister Dullah Omar said that the government had a vision of local ports permitting unhindered flow of goods through them at low cost and high private-sector participation and that the ports policy and legislation would be tackled by a committee, which would come up with a draft framework by July 2000 (Officials urge ports to revamp system, 2000).

In August 2000, NPA, Chief Executive Officer (CEO) Siyabonga Gama addressed a South African Chamber of Business briefing and mentioned that the completion of Portnet's division into two entities, a port authority and port operation was to be done by April of 2001 (Wadula, 2000: 14). He further stated that the challenges faced at the ports included reviewing existing contracts and allocations together with service-level agreements in order to establish standardised leases, standard operating and concession agreements and licenses across all ports (Wadula, 2000: 14).

Gama recognised the need for South Africa to become an export-oriented country and Portnet's role was to ensure the provision of smooth running trade between South Africa and other countries. This he believed would be done through creating adequate infrastructure to combat the problems faced at the ports (Wadula, 2000: 14). Also speaking at the briefing was Tau Morwe, CEO of SAPO. He expressed Portnet's intention to make independent, all port-based cargo handling business by 2003 (Wadula, 2000: 14). These businesses were to be self-sustainable and able to realise business growth rates through increasing shareholder value by creating independent port handling businesses that meet customer needs (Wadula, 2000: 14).

(The actions in this section show Portnet (here NPA and SAPO) asserting its desire to improve productivity (see Box F, Row 4). We also see Transnet discussing the broadening of its participation in port legislation to safeguard its interests of retaining port profits (see Box G, Row 7). The preferences of the shipping companies are to support private participation so as to increase productivity at the ports (see Box F, Row

3). *As for the unions, though introduced to the idea of private participation in this section, their de facto preferences will be revealed in the next section.)*

3.3.2.2: Opposition surfaces – but seemingly is overridden. In May 2000, Congress of South African Trade Unions' (COSATU) had a mass action campaign which included a pan-African conference on privatisation. COSATU expressed that privatisation was not always necessary and argued that strategic intervention by the state was vital to achieve development goals. COSATU's coordinator for fiscal, monetary and public sector policy Neva Makgetla voiced her concerns at the campaign in regards to Portnet. She argued that secretive, protected and hierarchal management led to inefficiencies, with Portnet wharfage costing three times the international norm (Bramdaw, 2000: 2). According to COSATU, state ownership is an end in itself in a democracy and therefore it is vital for the government to improve the assets and capacity of the state in order for society to direct development (Bramdaw, 2000: 2).

September 2000 saw the conclusion of tough negotiations between Transnet Executives and government officials after the Public Enterprises Minister Jeff Radebe tabled the Transnet Pension Fund Amendment Bill which promised to substantially lessen the burden on Transnet's finances (Chalmers, 2000: 15). The most important aspect of this bill would arguably be that the new pension fund arrangement enabled Transnet's restructuring and partial privatisation programme to move forward (Chalmers, 2000: 15), including governments plans to introduce private sector concessions to Portnet.

By the end of September, 2000 Radebe announced that the government was planning to publish its proposals for the restructuring of South Africa's ports by the end of October (Government to issue port restructuring plans by end of month, 2000). The policy document would include port operations being outsourced to the private sector in line with the framework policy which was issued in August of 2000; An Accelerated Agenda for the Restructuring of State-owned Enterprises (Department of Public Enterprises, 2000). This policy document discussed the need for Portnet to be split into a port authority and separate operations arm.

By November 2000, a draft ports policy had been completed by a top-level steering committee and was expected to be due for publishing by December of 2000. The ports policy was to be maintained by the transport department including the development of the regulatory framework and appointment of members of the regulatory body (Chalmers, 2000a: 3).

This draft policy included the establishment of a port regulator. The regulator was to oversee the seven commercial ports and was at the time, expected to be established by 2001 following the completion of the draft ports policy (Chalmers, 2000a: 3). The regulator was also expected to deal with issues such as vessel traffic, licensing, and concessioning while the port authority would oversee the long-term development of the ports, administer port infrastructure and regulate the operations of the ports. This port regulator was only established in 2009. The regulator's functions and the role it played in the reform process will be discussed further in Chapter 4.

(This section shows COSATU's de facto preference to oppose private participation as an ideological opposition (see Box G, Row 5). We also witness in this section, one of Transnet's principals, Department of Public Enterprises displaying its de facto preference to restructure the SOE and its first step in doing so is to sort out Transnet's debt issue (see Box F, Row, 1). With the Pensions Bill, Transnet's preference to retain the ports to pay its debt is taken away. But as we shall see in the sections regarding the Ports Bill, Transnet has another plan up its sleeve).

3.3.2.3: Restructuring and private participation gets underway. The new measures of the draft policy were such that private participation was expected to start playing a greater role through public private partnerships and concessions in port operations within the next 12 to 18 months. Within the time period, the Ports Act was also expected to be finalised-- meaning the Act was expected to be released by 2002 (Chalmers, 2000a: 3).

In December of 2000, Dudula Shipping, which is a Black Economic Empowerment (BEE) marine service company, entered into a joint venture with CSX World Terminals. This was a joint venture which would provide the United States based group an

opportunity to expand into privatised South African terminals (Jenvey, 2000: 7). The objective of this venture was that in the long-term, CSX World Terminals would become a concessionaire with Portnet for the operation of container terminals in Cape Town as well as Durban (Jenvey, 2000: 7).

In August 2001, Bidvest, the largest listed service company on the Johannesburg Stock Exchange (JSE) also expressed its interest in exploring new business opportunities with Portnet arising from the intended privatisation of its port operations as well as from increased exports in South Africa.

(In this section, we see one of the de facto preferences of port users which is to participate in port operations for profit (see Box F, Row 3).

3.3.2.4: Back and forth within Government and the ANC alliance. On March 20th, 2002, the Portfolio Committee on Transport, having conducted hearings on the Draft White Paper on Commercial Ports Policy reported that it needed the following amendments in these four respects:⁹

(a) There was vagueness about the end-state institutional location of the NPA. Given the largely regulatory, landlord and strategic policy-making role envisaged for the NPA, they believed that the White Paper should have unambiguously stated that the NPA should, in its end-state, be answerable to the national Department of Transport (Parliament Monitoring Group, 2002).

(b) The draft made a number of proposals on port operations restructuring. The Committee believed that any such restructuring was to be based on in-depth research into the sustainability of any proposal, and that this restructuring would involve effective negotiations within the context of the National Framework Agreement on the restructuring of state-owned enterprises (Parliament Monitoring Group, 2002).

⁹Information on the report was obtained from "Parliament Monitoring Group", <http://www.pmg.org.za/docs/2002/comreports/020619pctransportreport.htm>

(c) The draft introduced the notion of inter-port competition. The Committee believed that the White Paper would make it clear that any inter-port competition would be strictly within the framework of an overall, emerging South African growth and development strategy (Parliament Monitoring Group, 2002).

(d) In general, the White Paper was to more clearly emphasise the critical and overarching necessity of aligning port policy with an emerging national growth and development strategy (Parliament Monitoring Group, 2002).

In April 2002, Jeff Radebe announced that Cabinet had approved the ports policy and that a model for concessioning had to be finalised (Chalmers, 2002: 1). The plan at the time was for the NPA to receive proceeds of concessions which would be used for the development and maintenance of port infrastructure.

Within the same month, a top-level task team was established to explore options for concessioning the ports (Chalmers, 2002: 1). The key challenge faced by the task team which comprised the Department of Transport, the Department of Public Enterprises and the Department of Trade and Industry was how to deal with issues of congestion in Durban port.

In June, 2002 it was announced that a pilot scheme to concession Durban's container terminal would start within the year. SATAWU, Rob Davies, Trade and Industry Chairman of Parliamentary Portfolio Committee and Jerney Cronin, Transport Chairman of Parliamentary Portfolio Committee, called on more debate on the principle of concessioning as they believed it may not have been the best solution to the problem. Ben Martins, Public Enterprises Parliament Portfolio Committee Chairman agreed that clarity was necessary for certain issues debated (Ensor, 2002: 3).

According to Cronin proper analysis of the problem had not been undertaken and the problem at the ports was universal and not specific to containers. He felt that concessioning was not the only solution to the problem at the ports and further

mentioned that Parliament needed to be involved in the policy formulation process as Cabinet had only decided to concession Durban Container Terminal (Ensor, 2002: 3).

Also speaking at Parliament, General Manager of Policy and Implementation at the Transport Department, Jerry Makokoane, mentioned that the final white paper on the ports policy would be released in mid-July of 2002 (Ensor, 2002: 3).

What happened instead was that in July 2002, three of the most influential transport labour unions (SATAWU, the United Transport and Allied Trade Union and SA Logistics Services Transport and Allied Workers Union) banded together to oppose the concessioning process and issued government with an ultimatum to halt the process, or face members refusing to allow winning bidders into the country's ports (Ensor, 2002: 3). These labour unions felt that the move to concession Durban's container terminals was being imposed on them and that they would collectively agree to reject Cabinet's decision. According to the unions, no meaningful consultations or analysis had been conducted to verify that concessioning was the appropriate way to transform the ports (Chalmers, 2002a: 1).

In this regard, Sivi Gounden, Public Enterprises Director-General mentioned that the Government remained committed to engaging the unions on the ports restructuring process within the auspices of the National Framework Agreement (NFA) governing the restructuring of state assets (Chalmers, 2002a: 1).

Jeff Radebe also mentioned in his budget speech that the Durban proposal was in line with the National Ports Policy in which all stakeholders, including labour, participated. He further mentioned that labour would be given job security by new concessionaires for a minimum of three years, pension funds as well as other social security benefits (Chalmers, 2002a: 1).

(The de facto preference of the ANC as government was to involve private participation in a manner that would continue to benefit the major shareholder of the ports. On the other hand, the labour unions maintained their stance to oppose reform with the preference to retain jobs after the inclusion of the private sector-- creating complications within the alliance (see Box G, row 5)).

3.3.2.5: The White Paper is released. In August 2002 the White Paper on National Commercial Ports Policy was released to the public and contained the following:

“Section 3: National Commercial Ports Policy Statements

1. Institutional arrangements and governance of the commercial ports system

Transnet Limited currently owns the real estate of South African ports. The port authority function is delegated to the National Ports Authority, a division of Transnet. Services within the ports are provided by either the National Ports Authority, the Port Operations, another division of Transnet Limited, or private enterprise. Having a national port authority function as part of a transport company has resulted historically in the formation of several undesirable conditions that have detracted from the primary purpose of ports, skewing prices, misallocating port revenues and creating suspicion in the maritime and transport industries about the impartiality of the port entity within a transport company” (Department of Transport, 2002: 13).

“There exists a legacy of fragmented private sector involvement in ports relating to land allocation and leasing terms. Several private terminal operators carry out commercial activities related to cargo traffic management and handling. Certain port users are captive in several monopolistic private sector terminals.

At this stage the Port Operations Division of Transnet Limited is the major terminal Operator, handling nearly 100% of containerised, 80% of break-bulk and 30% of the bulk cargoes in the South African ports.

The White Paper on National Transport Policy laid out a proposed policy to address these challenges and four fundamental port policy guidelines were recommended. These were briefly:

- Establishment of the National Ports Authority;
- Establishment of the Independent Port Regulator;
- Separation of the port authority and port operations functions; and

- Promoting low cost, high level of service, and shipper choice in the port operations by creating a competitive environment in the commercial ports system.

The key guiding principles underlying the new port dispensation were:

1. The National Ports Authority within Transnet would be positioned outside Transnet in accordance with the restructuring programme of Transnet, as approved by the Minister of Public Enterprises;
2. The National Ports Authority post Transnet end-state would then be established as a new State-owned corporate entity;
3. The 'National Ports Authority' would be the landlord of the South African ports and would own all the land and the port infrastructures within the port estates;
4. Greater private sector involvement in operations would be sought through leases and concessions;
5. The allocation of leases or concessions would be open to competitive bidding; and
6. The bidding process would be transparent and based on a set of clearly stated objectives/targets, criteria and measurable deliverables" (Department of Transport, 2002: 14).

Objective Functions of the National Port Authority	Objective Functions of the Port Regulator
The NPA mandated is to create a competitive environment in the commercial ports system so as to ensure an affordable, internationally competitive, efficient and safe port services	The regulator is neither accountable to the institutional nor operational arms of the ports but directly accountable to the government.
The National Ports Authority is in charge of infrastructure development as landowner of the ports. This further extends to the function of issuing lease and concession agreements to private companies	The objective of the regulator is to monitor the activities of the NPA to ensure that no rent seeking behaviour occurs. The Port Regulator is also mandated to exercise economic regulation of the port system.
	The Port Regulator promotes regulated competition and approves or rejects the NPA's proposed tariffs.

Source: Compiled by Author from White Paper, 2002.

(The ports policy presented some winners and losers of the game. The winners were the Department of Public enterprises whose preference to restructure the ports is fulfilled by the policy (see Box F, Row 1). The loser was Transnet in that its preference to maintain its grip on the ports was squashed by the policy (see Box G,

Row 7). As mentioned earlier, Transnet has a plan and it will be evident in the efforts made towards the Ports Bill).

Section 3.3.3: Concessioning Legislation: The National Ports Bill 2002-2005

The proposed concessioning legislation experienced a lot of opposition mainly from the unions which acted strongly against its enactment. Furthermore, Transnet was not ready to loosen its grip on the ports as this move would negatively affect its balance sheet. Despite this opposition, the Public Enterprises Department felt the need to fast track concessioning to deal with congestion at the ports. The other actors involved in this decision point were the NPA, SAPO and the private sector. This section of the chapter shows the interplay among these players in their efforts to produce the National Ports Bill.

Section 3.3.3.1: Hurdles for concessioning legislation emerge. By October 2002, the NPA was generating approximately 70 per cent of Transnet's profits and making up a significant amount of its assets (Chalmers, 2002b: 1). However, in terms of the National Ports Policy, the cash cow was to become a separate state-owned though autonomous entity. Before moving ahead with concessions, there was need for an independent regulator to be established in the interim although ultimately the Port Authority would be regulator of the ports sector once out of Transnet.

According to the Public Enterprises Restructuring Director, Richard Goode, the government was keen to ensure that the ports benefited from the funds they earned although it had to be mindful of the manner in which Transnet evolved. If the NPA was to be separated from Transnet during the time the ports policy was released, Transnet would fall over. According to the Transnet CEO, Mafika Mkwanaazi, his understanding was that the NPA would separate from Transnet after 2007 with a full strategy to be worked out to ensure that there was no sudden shock to Transnet (Chalmers, 2002b: 1). The separation strategy was expected to give Transnet five years to sort out its pension fund problems which it inherited from its predecessors as well as pay for the

bulk of its planned R45 billion capital expenditure drive for infrastructure renewal and extension (Chalmers, 2002c: 15).

However, Jeff Radebe, the Public Enterprises Minister wanted to fast track the private sector involvement in Durban Container Terminal (DCT) as it was experiencing serious congestion problems which needed to be dealt with promptly. The two key issues which challenged the Transnet Board in terms of unbundling the Authority were firstly, whether or when the authority would be established as a separate entity or corporatized and secondly, how to compensate for lost profits and revenue. Being that Transnet was planning the R45 billion capital expenditure drive, the corporatisation of the authority would clearly cause problems for Transnet as its commercial lenders would be concerned with the separation of the cash cow from the group (Chalmers, 2002b: 1).

In November, 2002 SATAWU's officer Jane Barrett announced that the union would launch anti-concession protests which would mean a socio-economic strike under the Labour Relations Act. This protest, she said, would only be triggered if government was inflexible (Forrest, 2002: 9).

(What we learn from this section is that the Department of Public Enterprises wants to fast track the concessioning legislation to deal with the congestion at the port of Durban—to increase productivity (see Box F, Row 1). We also observe the labour unions still standing firmly against concessioning of the ports to safeguard their interests of retaining their jobs (see Box G, Row 5)).

Section 3.3.3.2: Concession legislation underway despite opposition from SATAWU. As endorsed by Cabinet in April and gazetted as part of the national ports policy in August, concessioning was the way forward to attract private investment. Financed by British and United States governments, Canadian consultants were hired to conduct a research on all terminals at the Durban port with an eye at contracts in 2003. According to (SATAWU Declaration On Government's Port Privatisation Plans, 2002), Hutchinson's and P & O Ports (International Operators) were said to be interested concessionaires.

For SATAWU, this research was a waste of money as preliminary research had not been conducted locally. They also suspected that the desires of the United States and the United Kingdom were to promote the interests of the international terminal operators who were waiting on the wings to take over the Port of Durban, leaving nothing to local investors (SATAWU Declaration on Government's Port Privatisation Plans, 2002).

In light of this issue, SATAWU and the Department of Public Enterprises met to discuss in October of 2002. The officials of the union insisted the principle of concessioning was not up for debate and referred this dispute to the National Economic and Labour Council in November. According to the unions, the decision to concession DCT was not backed by research and their request was for research to be undertaken and for other options to be tabled.

In February 2003, Tau Morwe, CEO of SAPO, defended port restructuring following criticisms made by SATAWU. According to Morwe, restructuring of the ports was a critical catalyst to boost economic growth as well as promote investor confidence, and Government's plan to grant long-term management contracts for the private sector to run port terminals was vital as it would increase productivity, create jobs, deal with large infrastructure backlogs and reduce tariffs (Chalmers, 2003: 2).

Morwe further mentioned that labour had been involved in all the discussions which involve the transformation of the ports and that the aim in 2003 was to have Transnet's port-based operations independent, able to realise business growth targets and be self-sustainable (Chalmers, 2003: 2).

As SATAWU and SAPO battled out the issue of concessioning, Radebe was announcing that invitations to tender for the concession of DCT would be issued by April 2003. Speaking at a Parliamentary media briefing, Radebe mentioned that the concession model was in its final stage of development, after a long complex and consultative process and would be presented to Cabinet soon (Ensor, 2003: 2). This process took long due to the wide range of jealously guarded interests in the ports terrain (Ensor, 2003: 2).

(In this section we see SATAWU still standing against private participation (see Box G, Row 5) but is defeated by the Department of Public Enterprises which goes ahead with the agenda by signalling that invitations to tender would be out soon (see Box F, Row 1). Portnet (SAPO) defends its stance for private participation to improve the operations at the ports (see Box F, Row 4).

Section 3.3.3.3: The National Ports Bill is blocked. In March 2003, the draft ports bill debated by Parliaments Transport Committee caused a lot of friction among the actors of port restructuring. NPA CEO, Siyabonga Gama objected to the government's plans to create an independent regulator as a permanent institution. The bill stated that the ports authority would become an independent body outside the Transnet fold and would be subject to oversight by a permanent independent ports regulator. Gama felt that regulation should be left with the NPA after its separation from Transnet but agreed with the recommendation of having an interim regulator during the transitional phase (Chalmers and Ensor, 2003: 2).

Another disagreement between Transnet and the NPA was over the fate of the NPA being under the Transnet umbrella. This dispute prompted Parliament to refer back to the drawing board to draft legislation that created an institutional framework to put the ports out to concession (Chalmers, 2003a: 11). The transport committee had asked the drafters to return with a reworked draft within the following two months as well as consider the relationship between the Ports Authority and Transnet, and to clarify the position of a proposed Regulator (Chalmers, 2003a: 11). The Committee Chairman, Jeremy Cronin, said the committee wanted more discussion between the Departments of Transport and Public Enterprises and between the NPA and Transnet (Chalmers, 2003a: 11).

In a letter to Parliament, Bongani Khumalo, Transnet Chairman indicated, "Transnet is of the view that the NPA remains part of Transnet at least in the short to medium term as the transfer can weaken the solvency and viability of the company, and will have a profound adverse effect on the economy" (Chalmers, 2003a: 11).

Public Enterprises Restructuring Director Richard Goode said the ports white paper outlined the basic institutional infrastructure, with an independent ports authority as a fundamental feature. However, the Authority would be removed from Transnet only when the group's financial circumstances allowed. According to Goode, the transactions required to put the ports out to concession could go ahead without the legislation in place, and therefore, any delay would not be critical (Chalmers, 2003a: 11).

(Here we see Portnet (NPA) standing against reform in light of its powers being reduced by the Port Regulator (see Box G, Row 6). Transnet is also battling with the issue of NPA standing independently from it (see Box G, Row 7) as it will lose the profits being extracted from the ports. Will Transnet manage to win this battle? Let us see what happens when the Ports Bill is amended).

Section 3.3.3.4 National Ports Bill amended. On March 27th, 2003 the National Ports Bill was amended and it proposed that the NPA would be incorporated as a separate entity within the Transnet group. This would be the first phase and would only be hived off as an independent company once Transnet's finances allowed (Ensor, 2003a: 4).

The Authority was to house all Transnet ports, obligations and rights related to the ports as a corporatized entity within Transnet and according to Transnet senior business strategist Marius Luyt, in his address to Parliament's Public Enterprises Portfolio committee, the amended bill would not negatively affect Transnet as it would only be removed once Transnet had been restructured (Ensor, 2003a: 4).

Unfortunately for Siyabonga Gama, NPA CEO, the bill maintained the need for the permanent establishment of an independent regulator.

(This section shows us how Transnet has managed to maintain the ports within its wing but will this continue to be so? (See Box G, Row 7).

Section 3.3.3.4.1: More opposition from SATAWU. In May 2003, the Government requested an urgent meeting with SATAWU to discuss concessioning in order to avert a strike by the group (Letsoalo, 2003: 11).

Several SATAWU members staged demonstrations in a bid to force government into consultation with the unions on the restructuring process. According to SATAWU, government did not consult the group on the ports policy in accordance with the National Framework Agreement (NFA) (Letsoalo, 2003: 11).

On May 12th the Minister of Public Enterprises Jeff Radebe met for three hours with key transport trade unions, the United Transport and Allied Trade Union, SATAWU, and the United Association of SA (Chalmers, 2003b: 2). The Minister reiterated the government policy's position on restructuring the ports which was presented to the unions in October 2002 as well as February 2003. He further mentioned that the new ports restructuring committee would provide a forum for talks on the issues around the restructuring of operations and the committee would report back to the Minister in six weeks on the progress made (Chalmers, 2003b: 2). Within the six week period Radebe stated that he would also issue a request to private operators to submit their expressions of interest in the concession process.

The trade unions assumed that they were comfortable with the outcome of the meeting as it was positive and that the Minister agreed that the terms of reference of the restructuring committee would not "preclude consideration of options other than concessioning as the instrument of restructuring" (Chalmers, 2003b: 2).

(Here we see the unions and the Department of Public Enterprises bargaining to prevent the loss of jobs which would be affected by concessioning and we see the end of a strike which was disrupting productivity at the ports (see Box F, Row 1 and Box G, Row 5)).

Section 3.3.3.4.2 Elements of the amended National Ports Bill.

On May 21, 2003 Parliaments Transport Committee was briefed by Dumisani Ntulu, Transport Department Manager of Maritime Regulation. The briefing was on the changes to the draft National Ports Bill which made provision for Transnet separating the NPA in a three-stage process (Ensor, 2003b: 2).

First, the authority would become a separate division within Transnet with a responsibility to act as a port authority. Then it would be incorporated as a separate

company holding all the assets and liabilities of Transnet related to ports (Ensor, 2003b: 2). Finally, the authority would become an entirely independent private company with its own share capital. The authority would be the ultimate landlord for all ports, responsible for their management and administration (Ensor, 2003b: 2).

The Transport Department was concerned that Transnet could prove tardy in facilitating the end-state and therefore included a provision allowing Jeff Radebe to act if Transnet failed to do so (Ensor, 2003b: 2).

The draft bill was silent on how long the interim state would be until independence of the Authority. Furthermore, the port regulator section had been beefed up substantially (Ensor, 2003b: 2). The bill envisaged that the Port Regulator would be an interim body while the NPA remained within the Transnet fold. Its task would be to regulate the relationship between the NPA and Transnet to ensure that the latter did not benefit unduly from decisions of the Authority (Ensor, 2003b: 2). The Regulator would also have to issue guidelines for concessioning and public/private partnerships and would be able to review and approve tariffs decided upon by the Authority (Ensor, 2003b: 2). Once it became independent the Authority could play the role of Regulator. The bill provided for the winding up of the Regulator though it could also continue operating beyond the interim phase.

In early July, 2003, Jeremy Cronin, at Parliaments Transport Portfolio Committee meeting mentioned that the work on the NPA and Regulator Bill was to be completed by August 2003 (Ensor, 2003c: 2).

In contrast to the white paper which proposed the mandatory end state of the Regulator, the bill stated that the government could decide to collapse the institution at any time it deemed fit. In terms of leases, Cronin stressed that the alteration or termination of leases would have to take place within the bounds of constitutionality and after negotiation (Ensor, 2003c: 2).

(The amended Ports Bill shows Transnet back on the side lines watching as its principals take away its precious cash cow. In knowing that Transnet is not for the new Ports Bill, the Department of Transport places Public Enterprises as referee to ensure that Transnet does not take its time in separating itself from the ports. In this section,

the Department of Public Enterprises and Transport are winning but for how long will this last? (See Box F, Row 1 and 2).

Section 3.3.3.5: Black Empowerment deals underway in anticipation of concessioning legislation. Within the same month (July 2003), international logistic players were getting their black empowerment ducks in a row ahead of calls for tenders at DCT. Jeff Radebe and Transnet CEO Mafika Mkwanaazi used public forums to confirm their intentions to have tender documentation available in the near future although the legislation allowing government to privatise its assets had not been tabled as yet.

In light of this, three empowerment deals were announced within the shipping world in July of 2003. A deal worth R2.1 billion was struck between Bidvest Group and Dinatla Investments consortium in which Bidvest would acquire a 15 per cent shareholding in the investment holding company in three years' time (Jenvey, 2003).

Bidvest group corporate finance executive Jack Hochfeld confirmed the group would “be interested” in any opportunities offered in port privatisations (Jenvey, 2003).

The shipping group Grindrod and black economic empowerment company J&J Group announced a warehousing and logistics joint venture, Grindrod J&J Logistics, as a forerunner to submitting tenders for privatisation concessions throughout Africa. Grindrod MD Ivan Clark said the group would “express interest” in any wharfside opportunities, including concessions in South Africa and Mozambique (Jenvey, 2003).

US international port terminal and logistics group CSX World Terminals, which entered into a joint venture agreement with black empowerment shipping company Dudula Shipping in 2000, said it would open a permanent office in Durban in August of 2003.

The group bluntly said the move was a means of securing its position in South Africa ahead of tendering a bid for the DCT (Jenvey, 2003).

Dudula Shipping CEO Sithembiso Mthethwa said the joint venture would follow the DCT bid with others for various value-adding concessions (Jenvey, 2003).

The CEO of Spectrum Shipping, an independent clearing and forwarding intermediary and service provider to local importers and exporters, signalled its intention to seek acquisitions with niche market, black empowerment groups (Jenvey, 2003). Before departing in February he expressed that once the shareholding and management structure reflected the group's BEE aspirations, the group would target government contracts as a means of growth and expansion (Jenvey, 2003).

Despite these moves from the private sector, SATAWU remained convinced government would still be open to talks on privatisation. The union demanded a public reassurance from Radebe that the current talks on the future of SAPO were not “a bad faith sham” (Jenvey, 2003).

(In this section we see the interests of shipping companies coming into play in hopes for the concessioning legislation which was being solicited by the Department of Public Enterprises, and interestingly, Transnet. SATAWU is still against concessioning but a shift occurs in the next section (see Box F, Row 3 and Box G, Row 5).

Section 3.3.3.6: Agreement between Government and labour to be submitted to Cabinet. In October 2003, it was announced that a report pertaining to the final agreement between labour and the Government on the restructuring of the ports was to be submitted to Cabinet shortly. Once the agreement was approved by Cabinet, the Government would have won labours much needed support for the process as it conceded that the granting of concessions may be necessary for the ports to be more efficient and cost effective (Enslin, 2003: 8).

Once Cabinet approved, labour would have won guarantees that there would be no job losses in the three years before and after the introduction of the private sector and this prospect was likely to be extended to a five-year moratorium on job losses on either side of the deal (Enslin, 2003: 8).

According to the trade unions, most of labours proposals were accepted and would be included in the final agreement although the negotiation was not easy (Enslin, 2003: 8). Government had yet to agree formally to a requirement of the concession contract that trade union-linked organisations be awarded a slice of it by the winning concessionaire

(Enslin, 2003: 8). Government had already ruled that 15 per cent of the DCT concession would be set aside for black economic empowerment (Enslin, 2003: 8), although finalisation of the concession would not happen soon (Ensor and Phansiwe, 2003: 1). The whole process of negotiating and awarding the tender was likely to stretch for at least 18 months (Ensor and Phansiwe, 2003: 1).

(Here we see the bargaining and win-win situation for the labour, trade unions and the government. The unions would see the retention of their jobs while the government would be able to concession the ports without being contested by the unions (see Box G, Row 5)).

Section 3.3.3.7: Ports Bill is tabled. A new ports bill was tabled in February 2005 in which the new Public Enterprises Minister Alec Erwin was to decide when the NPA would be removed from Transnet, after consulting new Transport Minister Jeff Radebe and with the agreement of Finance Minister Trevor Manuel (Ensor, 2005: 4).

The bill gave no definite period for the removal of the NPA from Transnet and iterated that all service providers in the ports were to be licensed by the Authority and would be subject to performance agreements (Ensor, 2005: 4). Existing service providers - except the providers of stevedore services - would have six months after the act took effect to apply to the Authority for a license (Ensor, 2005: 4).

Stevedoring contracts and leases for offshore cargo handling facilities would lapse only at the end of the contract periods (Ensor, 2005: 4).

The bill also provided for the establishment of the Ports Regulator of between six and 13 members. It would regulate the ports system "in line with government's strategic objectives" and it would monitor the NPA (Ensor, 2005: 4).

(In this section we see the interests of Transnet's principals being accommodated for in the tabled Ports Bill (see Box F, Rows 1 and 2)).

Section 3.3.4: The National Ports Act of 2005 and its Immediate Demise.

In August, 2005 the National Ports Act was released in the Government gazette by the Department of Transport but according to the NPA website, it only came into effect in November 2006 (TNPA, 2013). A few months thereafter, a sudden turn of events took place which finally led to private participation at the ports being completely removed from the government's agenda.

The end result was such that the NPA remained within the Transnet umbrella without corporatisation. Transnet strategically integrated infrastructure ownership with operations revenue of the ports, railway and pipeline in order to borrow in the capital markets to finance long-term investments. The next sections of this chapter show how this came to be; the last section provides a preliminary conclusion of the outcome.

Section 3.3.4.1: Concessioning plans are halted. In November 2005, the government put a hold on plans to create private concessions to run DCT. According to Tau Morwe (SAPO CEO) the private concessions were not on the table due to Transnet's strategy to integrate the ports, pipelines and rails to increase efficiency and productivity as well as reduce the cost of doing business (Gass, 2005: 1).

Morwe noted that SAPO would continue running the ports until Transnet completed its public-private partnership model and the port operations would look for strategic partners in running certain businesses rather than concession them outright.

(In this section Transnet has managed to put a hold on concessioning meaning that private participation will not be a threat to its ability to retain the profits it is getting from the ports. Furthermore, this strategy to integrate the ports is likely to continue the culture of cross subsidisation of profits from the ports to loss making divisions of Transnet (see Box G, Row 7)).

Section 3.3.4.2: Private sector participation completely removed from the agenda. By July, 2008 the idea of concessioning had not been heard of for some time. As it stood, the 2005 ports legislation envisaged that the NPA would become a separate company with its own bank statements (Joffe, 2008: 9). Transnet would still be sole

shareholder although it would no longer be able to consolidate the ports into its financial results.

In early August 2008, Maria Ramos, Transnet CEO announced that Transnet had received assurances from government that it no longer intended to corporatize the NPA as such restructuring would negatively impact Transnet strategically and financially (Mpofu, 2008: 4). This meant that the Government intended to remain the only significant driver of operations and development of the ports.

Transnet's new strategy was to integrate the rail, ports and pipeline operations and therefore Ramos saw no sense strategically to corporatize the ports (Joffe, 2008: 9). Her argument was that many companies use profits from one division to subsidise other companies (Joffe, 2008: 9) and that vertical separation had failed in other countries and therefore the global trend was to move away from it (Mpofu, 2008: 4). Dave Rennie, Grinrod, Freight Services CEO argued that this move closed doors for private players to be involved in the port sector which meant that port development remained in the hands of the state (Mpofu, 2008: 4). Rennie further mentioned, "Port operations could have benefited from more participants coming in as this would have meant more capacity and improved efficiencies. It would have been beneficial for increased exports and export-led economic growth" (Mpofu, 2008: 4).

The legislation passed in 2005 provided for a restructuring program which would establish NPA now (Transnet National Port Authority (hereafter TNPA)) as a company in the position to benefit from public-private partnerships and concessions (Mpofu, 2008: 4). TNPA would have been responsible for development and maintenance of port infrastructure with the state retaining ownership while port operations would be outsourced to private operators through concessions. These concessions would produce revenue for TNPA which would be responsible for monitoring the concession agreements. The aim of the Government's restructuring process was to obtain higher efficiencies and lower costs to port users however, this rationale was superseded by Transnet's argument that corporatisation of the ports would strip it of its most profitable

assets which Transnet used to raise funds for its capital expenditure programme (Mpofu, 2008: 4).

Transnet's strategy of integration among the ports and rail and its capital expenditure program were at a critical stage and therefore the Government made a decision that did not envisage corporatisation, as this would have had a negative impact on Transnet's balance sheet (Mpofu, 2008: 4).

(Here we see Transnet letting loose of the decisions of its principals and pursuing its goal of financial autonomy see Box G, Row7)

Section 3.3.4.3: Transnet Wins the Battle. The end result of private participation at the ports was such that by 2010, Transnet had managed to push the consolidation of transport operations in line with what the company claimed was the global trend of transport sectors.

Vuyo Kahla, Transnet's Policy and Regulation Executive addressed Parliament's Trade and Industry, Transport, Public Enterprises, And Economic Development Committees in February 2010. During his address, Kahla mentioned that the Government's policy and regulation for the ports, rail and pipelines incorrectly assumed that introducing competition to Transnet's operations was a prerequisite for an efficient freight system (Ensor, 2010: 1). Instead, what Transnet needed, according to Kahla, was a secure regulatory environment that supported its establishment as a state-owned, integrated freight operation of rail, pipelines and ports (Ensor, 2010: 1).

At a briefing on infrastructure plans for Transnet, Kahla reiterated that he believed the Government was mistaken when it decided that separating infrastructure ownership from operations was optimal. He further mentioned that government was mistaken when it assumed that the state could own and invest in infrastructure while the private sector could be allowed to operate it (Ensor, 2010: 1). According to Kahla, if the corporatisation of NPA went ahead as envisaged in the National Ports Acts, key provisions of Transnet's loan agreements would have been breached and this would have reduced its ability to raise capital funding at optimal levels in the future (Ensor, 2010: 1).

Transnet was able to win the long battle of separating the ports from the Transnet umbrella so as to introduce the private sector. Through acting against what was to be law for the ports Transnet maintained its grip on the NPA as well as the port operations.

Section 3.3.5: Preliminary Conclusion

After establishing how institutional port reform took place in South Africa, referring back to the hypotheses in Chapter 1, Section 1.2, there is seemingly strong support for Hypothesis 1: Multiple Principals Hypothesis, than there is for the other hypotheses. As we have observed, the objectives of the ports sector were not aligned with the broader national developmental objectives and Transnet was able to win autonomy from its principals—successfully blocking private participation at the ports. Transnet worked in contradiction to the goals set by the Departments in order to pursue financial autonomy from Government subsidisation.

The unions were also clearly opposed to port reform initially although there seems to be an agreement which was struck with Jeff Radebe to prevent job losses after the introduction of private participation at the ports. This will be further elaborated on, together with the other hypotheses in the concluding chapter.

CHAPTER 4: SOUTH AFRICA'S PORT PRICING REFORM EXPERIENCE

Section 4.1: The Legacy of Port Pricing in South Africa

This chapter provides an analysis of South Africa's evolution of efforts to reform its port pricing system. South Africa introduced ad valorem wharfage in 1925 and these tariffs have shaped the transport system of the country (NEDLAC, 2008: 20). Wharfage is a category of general tariffs that are based on either the value of cargo or unit based (tons, TEU's, cubic metres) with the revenue generated by these tariffs used to pay for land-side equipment, infrastructure and administration (UNCTAD, 1995 cited in NEDLAC, 2008: 16). In South Africa, wharfage functioned as a key revenue contributor and central financing instrument for the rail and port system.

The next two sections illustrate South Africa's port pricing legacy by firstly showing the way port prices are skewed and secondly by explaining why port pricing is this way in South Africa.

Section 4.1.1: The Way in Which Port Prices Are Skewed

In revisiting the graph from Chapter 1, Figure 1, on total waterfront charges from a global perspective, we can see that South Africa's Port Authority charges are:

- 1) Substantially higher for cargo compared to shipping/terminal charges—illustrating that cargo based charges are cross subsidising ship based charges (Chapter1, Figure 1) and;
- 2) Significantly high for cargo based charges

**Box H: Port Authority Tariff Categories,
1980's**

FUNCTION	TARIFF	PRICE / COST SKEWNESS	% OF TOTAL REVENUE
Marine Infrastructure	Port, berth dues	Price well below Average Cost	≈ 3
Marine Services	User Charges	Price below Average Cost	≈ 6
Cargo-working Infrastructure	<i>Ad Valorem</i> Wharfage	Price substantially exceeds Average Cost	≈ 55
Cargo Services	User Charges	Price ≈ Average Cost	≈ 30
Miscellaneous (Lights etc.)			≈ 6

Source: Chasomeris, 2006

As we witnessed in Chapter 1, Figure 1 port authority charges in South Africa are very high and cargo dues constituted about 70 per cent of income to the port authority in 2002 (NEDLAC, 2008: 2).

Box H above shows categories of port tariffs in South Africa in the 1980's. The ad valorem wharfage of cargo-working infrastructure was providing about 55 per cent of the port authority's revenue, making up the bulk of Portnet revenue—and making Portnet a major profit contributor to Transnet. As we saw in Chapter 1 Figure 2, these profits were being diverted to other divisions of Transnet and its predecessors as well as to cover pension liabilities (NEDLAC, 2008: 21).

Section 4.1.2: Why South Africa's Prices Are Skewed.

i. ***Due to the characteristics of ad valorem wharfage during and after import substitution industrialisation.*** Ad valorem wharfage was used to reinforce tariff barriers and discourage high value cargo imports. It also raised the cost of exports and made South African ports expensive links in the logistics chain (NEDLAC, 2008: 20). According to (Jones, 2002 cited in Chasomeris, 2006: 107) port authorities had irresistible administrative advantages of raising revenue through ad valorem wharfage,

making it the main source of port revenue with a gross margin of 300 to 400 per cent. Ad valorem wharfage resulted in South African ports being profitable entities with high aggregate waterfront charges at world standards with low productivity levels viewed by the same standards. As a result, port pricing was artificially expensive for high value cargo and artificially cheap for vessels, on the basis of a tariff system that made sense for neither (Jones 2002 cited in NEDLAC, 2008: 20).

Pricing for services within the ports and port calls should, in principal, be proportional to the costs of a ship making the call and this covers four principal costs namely, general land and marine infrastructure (not attributable to a single user), time spent in the port, use of a berth (attributed to a single user) and the cost of handling goods (NEDLAC, 2008:1). Furthermore, the price setting should be based on long run marginal costs. In South Africa, price setting is not based on long run marginal costs as pricing practices are strategic and characterised by inclusion of non-port financing objectives (Van Niekerk, 2002; NEDLAC, 2008; Chasomeris, 2006).

Ad valorem wharfage had two dimensions: it was value - based rather than cost based; and prices were set at high levels, which grossly skewed revenues in excess of costs. Wharfage had no bearing on the operational activities which took place before putting the shipment cargo on the ship and subsequently wharfage charges had no bearing on operational activities prior to the placement of landed cargo on the quayside in respect of which landing and shipping charges were maintained (Chasomeris, 2006: 105). This therefore means that wharfage excluded tangible items of superstructure such as gantries, wharf crane or cargo handling equipment and terminals for which explicit charges were raised (Chasomeris, 2006: 105).

Another characteristic of wharfage was that on an ad valorem basis it favoured low value export commodities as it was proportionally lower than wharfage for high- value commodities while using the same infrastructure and port services. As an illustrative example, using notional prices, let's take the value of a container of raw iron ingots as \$10,000. Now let us assume that the same container is filled with fine machine parts, valued at \$500,000. With a constant ad valorem wharfage, the price would be 50 times

the price of low value commodities; notwithstanding the effort to move these containers is the same for high value products.

There was also a differential in the level of import versus export charges which reflected the legacy of the import substitution regime in that wharfage charges were twice the rate for imports than for identical exports. An example of this is when prior to the implementation of Value Added Tax (VAT) in 1991, ad valorem wharfage was 1.8 per cent on import containers and 0.9 per cent on identical export containers (NEDLAC, 2008: 21). This discriminatory charging was against cost and equity - based pricing principles. Prices are not expected to be exactly equated to costs but they should be reasonably related.

The import substitution regime was replaced by a manufacturing export-led economy in 1996 but even after this, pricing at the ports remained unchanged.

ii. South Africa's Capital and Energy Intensive Economy—"The Mineral Energy Complex". Prior to 1994 there was strong support for investment in capital-and-energy intensive enterprise though even after the inception of democracy and change in industrial policy, assistance is still on-going for heavy industry in South Africa (Black and Hasson, 2012:2). According to (Black and Hasson, 2012:2), 'traditional' exports have continued to expand with little diversification into non-traditional manufacturing exports. Their argument is that South Africa's industrial policy has been fairly interventionist but in the wrong direction through strengthening competitive advantage in resource-based, capital intensive sectors of manufacturing (Black and Hasson, 2012:2).

The subsidies for the capital-energy-intensive production are on-going in South Africa even after the change in industrial policy due to powerful interests which have banded around the capital-and-energy intensive growth path of South Africa. This concept was named the 'mineral energy complex' (Fine and Rustonjee, 1996) and naturally these powerful interests opposed any reduction of this support.

In the case of port charges in South Africa, all imports and non-mining exports subsidised mining port costs. This is rooted in the history of import substitution industrialisation as well as the 'mineral energy complex' of the South African economy.

For many years port charges were skewed in favour of bulk commodity exporters, with container traffic subsidising port investments (Smith, 2012: 5). South Africa's bulk commodity export tariffs are known to possibly be among the lowest in the world (Smith, 2012: 5).

Due to the 'mineral energy complex' there had been a historical reluctance to raise tariffs on bulk commodities, which for decades had been the primary export earner for the country-- at a time when container traffic had largely been an alternative for the country's imports (Smith, 2012: 5). During this time, the relatively low levels of manufactured goods exported from South African containers which were brought in as imports were sent back empty but increasingly, as South Africa industrialised and manufacturing shifted towards export markets, the dynamics shifted (Smith, 2012: 5). Tariffs on container traffic steadily increased over the years and the reluctance to increase tariffs on bulk commodities continued to exist (Smith, 2012: 5) until 2013 when a sign of change emerged.

With this background on port pricing in South Africa, it seems quite obvious that the reform would be to bring prices down and part of this at the expense of Transnet's profits but also to bring prices down at the expense of the mining sector. Through process tracing as conducted in Chapter 3, the next sections show the interplay among stakeholders in the efforts to reform port pricing in South Africa but before we get ahead of ourselves, the next section gives a brief summary of what is to follow.

Section 4.2: Restructuring Port Pricing—South Africa's Marathon

This section is in two parts which firstly give a summary overview explaining what happened in the effort to reduce prices at the ports using key decisions points, followed by a second section which introduces the stakeholders who were involved in port pricing reform.

Section 4.2.1: Summary Overview of Changes in the Pricing Regime 1996 – 2013

The abortive effort to reform prices 2002-2004. In 2001, the NPA embarked on port tariff reform which was expected to consist of a 4.49 per cent reduction in ad valorem wharfage, lowering the rate for imports from 1.78 per cent to 1.7 per cent and 0.89 per cent to 0.85 per cent for exports (Chasomeris, 2006). The aim of the tariff rebalancing was to introduce a more competitive and fair tariff system in line with international practice. Furthermore, the restructuring process was aimed to change past wharfage which was based on the value of cargo instead of volume or infrastructural costs. The new cargo dues system would decrease costs for value added goods—in line with the industrial policy of 1996. The tariff adjustments were also aimed at rebalancing the share of revenue contribution from marine services and infrastructure charges. According to (Chasomeris, 2006), costs for cargo owners were decreased although the costs were still value based.

In 2002, ad valorem wharfage was replaced by cargo dues which were levied on tonnage (volume) basis for bulk cargo and unit basis (set box rate) for containers (Chasomeris, 2006).

Stasis (with Regulatory Reform) 2005- 2008. For the period of 2005 – 2008 port tariffs by the NPA continued to increase in line with the inflation rate annually and exorbitant profits continued to be made on cargo dues to cross subsidise to other marine services, Transnet's divisions as well as the mining sector. In 2009 the Port regulator was established to determine port tariffs annually. Under the Port Regulator, tariffs continued to increase but at much lower rates than requested by Transnet.

Game changer – 2012. In 2012, the President of South Africa, Jacob Zuma announced that Transnet and the Port Regulator agreed to a substantial decrease in port tariffs during the year. This decrease was to result in exporters of manufactured goods receiving a decrease of approximately R1 billion in total (Zuma Details Massive Infrastructure Spend, 2012).

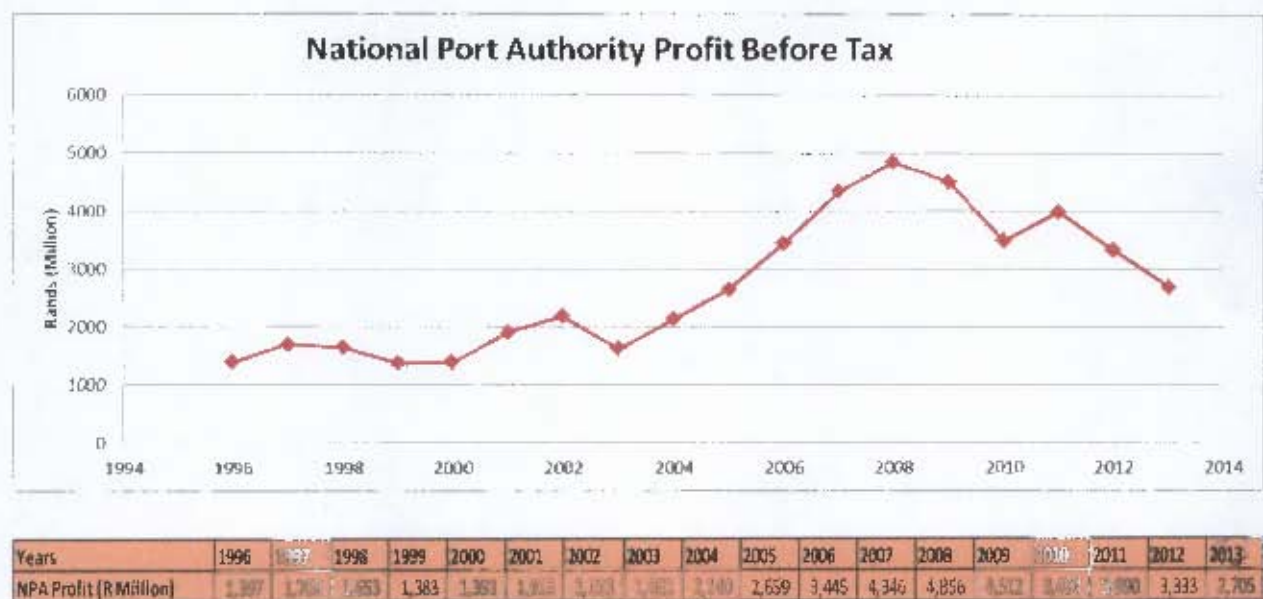
In September of 2012, the NPA proposed a new tariff structure. The motivation behind the tariff proposal was to promote the programme for the export of value-added goods

which stressed the alignment of the tariff structure with Government priorities through direct support to the key objectives of industrialisation and job creation (TNPA, 2012).

In April of 2013, the manufacturing industry finally won the battle to reduce port costs. The Port Regulator announced that all container export tariffs would be slashed by 43.2 per cent, container imports by 14.3 percent and vehicle export tariffs by 21.1 per cent (Wilson, 2013: 6).

Behind all these changes in port pricing was the need to keep the NPA profits high. The graph below shows for convenience, NPA's profits and the trends over the years.

Figure 7: NPA Profits before Tax 1996 – 2013



Source: Compiled by author with data from various Transnet Annual Reports

Section 4.2.1.S: Introducing the stakeholders.

In this chapter we only have four stakeholders. The industrial and commercial port users are exporters of value-added goods-- players who are to gain from port reform once the pricing structure is changed in their favour. The Port Regulator is mandated to set prices at the ports in line with the Ports Act. Transnet plays the role of Regulator before the Port Regulator is established. In its pursuit to extract rents from the ports, it increases port charges annually to satisfy its goals and therefore is against port pricing reform as

this will take away its ability to set prices. The commodity exporters are exporters of raw mineral commodities who for many years benefited from subsidised port tariffs. Port pricing reform takes away these subsidies from commodity exporters and therefore we see this group acting against pricing reform.

The key decision points for the port pricing reform process were:

- *The abortive effort to reform prices 2002-2004.*
- *Actions of the established Port Regulator 2009-2011*
- *Actions by Transnet and the Port Regulator after the President's State of the Nation address 2011-2013*
- *Implementation Finally—Port Pricing aligns with the Industrial Policy.*

The table below shows the stakeholders that were involved in the pricing reform process, their preferences as well as the actions they took towards the effort to alter the structure of port pricing.

Box I: Stakeholders for pricing reform

Stakeholders	For or Against Port Price Reform	De facto Preferences for Price Reform	Key Actions
1) Industrial and commercial users	For	To increase profit of transporting value-added goods in line with the national transport policy of 1996.	Made demands for reduction of port prices/ voiced disagreement towards price hikes (see <i>Sections 4.2.2.1.1, 4.2.2.1.3, 4.2.2.2, 4.2.2.3.2, 4.2.2.4, 4.2.2.4.1</i>).
2) Port Regulator	For	As mandated by the Ports Act is to regulate on behalf of the state, functions and	Rejected all the proposals by Transnet for tariff increases (see <i>Sections 4.2.3.1,</i>

		activities of the ports including and most importantly pricing at the ports.	4.2.2.3.3).
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Box J: Stakeholders against price reform

Stakeholders	For or Against Port Price Reform	De facto Preferences for Price Reform	Key Actions
3) Transnet	Against	To increase profits from the ports for investment elsewhere.	Resisted/ Blocked pricing reform in so far as the threat to pricing existed (see <i>Sections 4.2.2.1.1, 4.2.2.1.2, 4.2.2.1.3, 4.2.2.2, 4.2.2.3.2, 4.2.2.3.3, 4.2.2.3.4, 4.2.2.4.1</i>).
4) Commodity Exporters	Against	To continue being subsidised by exports of value-added products.	Opposed reform/ objected to tariff increases on bulk commodities (see <i>Sections 4.2.2.1.2, 4.2.2.4</i>).

Section 4.2.2: Trends in Efforts to Alter the Structure of Port Pricing-- The Analytical Narrative of Port Pricing Reform in South Africa

Using the same process in Chapter 3 this section provides an analysis of the stakeholders and their actions blow by blow, to reform port prices in South Africa.

As aforementioned, the GEAR policy was initiated in 1996 although it was not until 2013 that port tariffs for the export of manufactured goods were lowered by over 40 per cent. This translates into port pricing reform taking 17 years to align with South Africa's industrial strategy.

The aim of port reform was to introduce a more competitive and fair tariff system in line with international practice as South Africa's port charges were considered to be the highest in the world. Furthermore, the restructuring process was aimed to change past wharfage which was based on the value of cargo instead of volume or infrastructural costs. The mining sector had been hugely subsidised by this tariff structure which weighted in favour of raw exports, at the expense of the manufacturing and agricultural sectors for over 50 years. The new cargo dues system would decrease costs for value added goods which would be in line with the industrial policy of 1996. The tariffs adjustments were also aimed at rebalancing the share of revenue contribution from marine services and infrastructure charges as well as reduce the profits that were going to Transnet, in order to end cross-subsidisation of these profits to loss making units under Transnet.

Section 4.2.2.1: The abortive effort to reform prices 2002-2004. As witnessed in Chapter 3, the restructuring of Portnet was necessary in order to establish a landlord and operations division in 2000. With restructuring came a tariff reform initiative which was to align the ports with international standards and deal with the high pricing. The tariff reform was expected to be conducted by a Port Regulator which would set prices at the ports. This regulator, as we will see, was only established in 2009. In the sections below we see Transnet setting prices annually for the ports in the name of investment requirements. The tariff rebalancing receive varied reactions from port users and tariff reform seems nowhere in sight until the Port Regulator is established in 2009.

Section 4.2.2.1.1: Portnet to cut wharfage by 30 per cent. In September 1999 Portnet initiated a tariff reform initiative as part of the restructuring program. Speaking at a United Kingdom – South African Workshop on Ports, General Manager of Portnet Siyabonga Gama mentioned that Portnet was to cut wharfage rates by 30 per cent in the following few years as part of the restructuring process (Chalmers

1999b: 3). Gama further expressed that Portnet had acknowledged port wharfage rates were high by international standards although he believed that generally the company under charged for marine services by 40 to 50 per cent (Chalmers 1999b: 3). The decrease in wharfage, he said was likely to be offset by increases in other tariffs making the impact on revenue minimal (Chalmers 1999b: 3).

What happened in 2000 was contrary to Gama's tariff reform initiative. In February 2000, freight operators were brewing some resistance towards a draft tariff review which was to be implemented by April 1st of 2000. According to industry sources there was a hike in tariffs of approximately 7 – 8 per cent which was significantly higher than January's 2.6 headline inflation figure for that year (Marrs, 2000: 4). Spokesman of Renfreight Circle (a freight and logistics company) Sameer Wadhwa, was of the impression that the tariff increase would affect the price of all imports including finished goods and raw materials and on the export side; this hike would make South Africa's products less competitive in foreign markets (Marrs, 2000: 4).

Speaking at a Maritime Africa 2000 conference, Derek Lawrence, CEO of Ladit Enterprises the shipping company, stressed that wharfage made South Africa's port costs for manufactured goods among the world's highest and that port reform was vital for the development of South Africa's economy (Jenvey, 2000a: 6).

In Portnet's defence the new General Manager Pumi Sithole, mentioned that the new tariff increases were based on a forecasted inflation rate of 5.2 per cent although the company had to pursue "a differentiated tariff increase in view of various services' input cost structure differentials" (Marrs, 2000: 4).

(In this section we learn the de facto preferences of industrial port users and Portnet (Transnet). The preference for the industrial users here is that reduced cost of shipping value-added products will increase their profits (see Box I, Row 1). For Portnet (Transnet), its preference is to increase port prices to increase rents it receives from the ports (see Box J, Row 3).

Section 4.2.2.1.2: First attempt of tariff rebalancing 2002. In March 2002, SAPO was to increase handling fees by 22 per cent per container starting

May 1, 2002 and NPA was to change its tariff structure from rating the value of cargo to rating a flat fee (Claasen, 2002: 18).

These changes in port tariff structure angered the exporters of the country. Nolene Lossau, South Africa Shipper's Council Executive Director said that changes in the tariff structure would increase wharfage cost of some low- value bulk exports by 1500 per cent (Claasen, 2002: 18).

In principle, he said, the council did not object to the move from value based charges to flat rate although the level of the charges they considered was too steep. The Managing Director of Maersk, Peter Ehrenreich, was also displeased with the new charges. He said that the charges were too high for the services being provided by the ports (Claasen, 2002: 18).

According to NPA spokesman, Tegogo Moremi, the new structure for tariffs was to align with international practise and made them more transparent. Furthermore, he said that NPA wanted to address the imbalance in the tariff structure and revenue levels (Claasen, 2002: 18).

The end result of the 2002 tariff restructure was such that in comparison with charges prior to the tariff reform exercise, after taking out cargo handling, wharfage charges declined only from 79 per cent to 70 per cent of revenue to NPA despite the stated intention of tariff reform to reduce the over recovery on wharfage and make marine services more reflective of actual costs (NEDLAC, 2008: 27).

In light of the significant price increase via a once-off adjustment in 2001-2002, marine infrastructure charges were substantially increased in 2002 although the share that marine infrastructure charges make up in the port authorities basket of dues is small (NEDLAC, 2008: 27). The NPA continued to derive a substantial amount of its income from cargo dues—the former ad valorem wharfage. *(In this section we see the de facto preference of Transnet, which is to continue extracting rents from NPA cargo dues (decrease of cargo dues received was only 9 per cent)(see Box J, Row 3)). We also see de facto preference of commodity exporters which is to continue to benefit from subsidised port tariffs (see Box J, Row 4).*

Section 4.2.2.1.3: Transnet continues to increase prices of NPA and SAPO. In April 2004, NPA and SAPO increased their annual tariffs by 3.1 per cent and 6 per cent respectively (Phasiwe, 2004: 4). This move angered the shipping industry which was already battling against the effects of a strong rand. The shipping lines argued that this increase would hamper the export-led economy (Phasiwe, 2004: 4).

According to Tau Morwe, SAPO CEO, the hike was in line with the company's promise to the industry that it would go back to normal inflationary adjustments after concluding its tariff rebalancing of 2002. He further mentioned that the increases would enable SAPO to buy new equipment needed to meet service level obligations (Phasiwe, 2004: 4).

The CEO of NPA, Gama, also mentioned that the increase was for infrastructural upgrade and that the aim of the company was to develop a world class port system which would support South Africa's expanding economy and deliver on the demands from international and local customers (Phasiwe, 2004: 4).

The Container Liners' Operators Forum Chairman Dave Rennie said the increases were too high and that marine services had gone up by 113 per cent in the past two years, making South Africa's ports extremely expensive (Phasiwe, 2004: 4).

(In this section we see Transnet continuing to raise port prices even though the productivity at the ports is low, showing their preference to extract rents from the ports (see Box J, Row 3). The industrial port users are against this hike in prices due to its effect on their competitiveness. Their de facto preference is for port reform to take place in order to make profits for their exports (see Box, I, Row, 1)

Section 4.2.2.2: Stasis (with Regulatory Reform) 2005- 2008

In January, 2005 Transnet announced below-inflation port tariff increases in order to contribute to the lowering of the cost of doing business. According to Maria Ramos cargo dues paid by cargo owners would increase by 1 per cent and container handling tariffs by 5.7 per cent (Ensor, 2005a: 2).

In response to these increases, James Lennox, South African Chamber of Business CEO, said that the increases would have been more palatable to business if they were backed up by increases in productivity and port movements as port of Durban had been plagued by congestion (Ensor, 2005a: 2).

Also speaking on the hike was Container Liner Operators Forum Chairman Dave Rennie who expressed disappointment as he said stakeholders were not consulted about the proposed increases (Ensor, 2005a: 2).

In April 2007 port tariffs increased by 5.6 per cent in line with inflation forecasts (Enslin, 2007: 16). According to the NPA CFO, Mohammed Abdool in a letter to customers, the tariff rebalancing would enable the company to meet service commitments, particularly the rollout of their infrastructure investment programme (Enslin, 2007: 16).

Over the following five years the NPA was to spend R18. 5 billion on infrastructure upgrades and according to Abdool, these efforts were to reduce the costs of doing business through South African ports system—port users disagreed (Enslin, 2007: 16).

The Association of Ships' Agents and Brokers of Southern Africa (Asabosa) and the Association of Shipping Lines both objected to the tariff increases on grounds that the annual increases discourage additional ship calls (Enslin, 2007: 16). For the year to March 2006 NPA's cargo tariffs increased by 1 per cent and in the year to March 2007 NPA increased tariffs between 3.5 per cent and 4.5 per cent. Two years prior to 2006, according to reports, Transnet's tariffs increased by 16.5 per cent and 35 per cent respectively (Enslin, 2007: 16). In addition to NPA charges were SAPO cargo handling charges which in 2007, were in line with the NPA price hike. Below is the annual increment of cargo dues from 2003 to 2007.

Box K: Cargo dues annual percentage increase 2003 – 2007

	2003	2004	2005	2006	2007
Cargo dues	2.0%	2.0%	1.0%	3.5%	4.5%
CPIX	6.8%	4.3%	3.6%	4.6%	5.6%

Source: (NPA tariff books for various years cited in NEDLAC, 2008: 32)

(In this section there is no sign of tariff reform and prices at the ports continue to increase. Transnet is clearly still interested in the profits being made by the ports (see Box J, Row 3) and industrial port users are concerned with this as their profits decrease further (see Box I, Row 1).

Section 4.2.2.3: Port tariffs after the establishment of the Port Regulator

Section 4.2.2.3.1: Transnet and the new Port Regulator disagree on tariff rebalancing. In November 2009, Transnet and the newly established Port Regulator locked horns in terms of pricing at the ports. According to Transnet's spokesman, John Dludlu, the regulatory methodologies were in a state of flux, making it difficult for Transnet to optimally plan for funding solutions (Khanyile, 2009: 5).

Beginning its operations in 2009, the Port Regulator was to determine tariffs for NPA for the first time. Transnet asked for 10.62 per cent average increase for 2010 and depending on the complexities of the submissions and NPA's response, the regulator hoped to have a decision on the new tariffs for the ports by January 2010 (Khanyile, 2009: 5).

On January 20th 2010, the Port Regulator approved the NPA 4.42 per cent tariff increase effective April 1, 2010. According to the regulator the 10.62 per cent increase was assessed but it decided that 4.42 per cent was an appropriate increase in tariffs for 2010-11 financial year (Ports Tariffs to Increase By 4.42 Percent, 2010).

Speaking in Parliament in February 2010, Transnet aired its views on the current Regulator, stating that the tariffs were not conducive to invest in major infrastructure. Since Transnet for many years used its big balance sheet to pay for transport infrastructure and used its status as a state-owned enterprise to plan for the long term, the Port Regulator, among others, was no longer letting it do so (Filling in the Regulatory Policy Potholes, 2010: 8).

(This section shows the mandated efforts of the Port Regulator which are to regulate pricing at the ports (see Box I, Row 2) and this presents a challenge for Transnet as it cannot set its own prices at the ports to invest elsewhere (see Box J, Row 3)).

Section 4.2.2.3.2: Back and forth between Transnet and port users on tariff increases. In January, 2011 the Port Regulator approved a tariff increase of 4.49 per cent as opposed to the 11.91 per cent requested by NPA for 2011-12 financial year. According to South African Shipping Council the tariff hike was too high a charge for cargo dues (Langeni, 2011: 2).

The Council preferred a zero increase in tariffs due to the fact that productivity at the ports was low and there was still poor infrastructure at port terminals.

Tshediso Disenyana, Senior Manager for Maritime Industry Development at the South African Maritime Safety Authority was also strongly against the tariff increase as he believed there was no justification for the increase when looking at it from the view of service provision at the ports (Langeni, 2011: 2).

In August 2011, the NPA requested an 18.6 per cent increase in port tariffs for 2012-13 (Buthelezi, 2011: 20). According to Transnet's Sigonyela, this request was based on the need for the investments and costs of managing the ports system (Buthelezi, 2011: 20).

Senior economist at Econometrix, Tony Twine, was of the impression that exporters were concerned about port inefficiencies which were already adding to port charges and the port authority's request came at a time when its reputation was already tarnished (Buthelezi, 2011: 20).

In response to this, Sigonyela said that the application was guided by best practice in economic regulation for tariff determination and based on the interpretation of the ports directives under the National Ports Act (Buthelezi, 2011: 20).

The Chief Executive of the South Africa Association of Ship Owners, Thato Tsautse, said they were taken aback by the 18.6 per cent increase request as it looked unrealistic in the light of the economic climate (Buthelezi, 2011: 20). He said the tariff increase would place unnecessary pressure on the economy especially due to inefficiency within the supply chain.

Manager for Economic Intelligence and Finance at the Agriculture Business Chamber, Ms Lindie Stroebe, also expressed frustration in the tariff hike. She said that Transnet's behaviour, being an SOE was strange as the enterprise was profit-driven and its cargo dues were about to increase drastically at a time when the fragile local economy was highly dependent on state support. She further mentioned that there seemed to be a lack of understanding that the cost of doing business in South Africa needed to decrease so that exporting industries could increase market share (Radebe, 2011: 2).

In Transnet's defence, Sigonyela responded by mentioning that over the last five years, the Authority had invested R13.2 billion and planned to invest an additional R23.2 billion in the following five years on expanding and maintaining South Africa's port infrastructure hence the proposed increases (Buthelezi, 2011: 20).

(This section shows Transnet's de facto preference to extract rents from the ports for investment (see Box J, Row, 3). The port users' preferences here are to have pricing that reflects productivity (see Box I, Row, 1).

Section 4.2.2.3.3: Study on Port Terminals by the Port Regulator. The NPA and Port Regulator commissioned a study involving all major port terminals globally in 2011 (Buthelezi, 2011a: 15). This was in order to establish whether the claims that South Africa's ports are among the most expensive were true.

According to Tau Morwe, NPA Chief Executive, action would be taken to align prices with the global average if evidence showed that the tariffs were too high. Furthermore,

Morwe mentioned that NPA was working on restructuring its pricing model as part of its long term goals (Buthelezi, 2011a: 15).

In October, 2011 Transnet's Mboniso Sigonyela announced that it was developing a new pricing strategy for the ports and that this strategy would be implemented by March 2011. The 18.06 per cent Transnet applied for according to Sigonyela was based on allowing Transnet to recover its investment on owning, administering and controlling ports and its investment in port facilities (Donnelly, 2011).

(In this section we see the Port Regulator ensuring that it administers the right pricing by conducting a study (see Box I, Row 2). Transnet is also seen to maintain its stance on extracting more rents from the ports (see Box J, Row 3)).

Section 4.2.2.3.4: Transnet Exposed. Within the month of October, 2011, the Cape Chamber of Commerce sent a letter to the Port Regulator quoting a Wiki Leaks cable in which Transnet admitted to seeing the ports as its “cash cow” and using the profits from the ports to subsidise its loss making operations (Business blasts Transnet plan, 2011).

The letter further showed evidence that port tariffs had been artificially increased to serve as a tax on imports and the Chamber argued that Transnet had used every trick in the book to justify tariffs that were hundreds of per cent higher than those levied at leading ports in the developing world (Business blasts Transnet plan, 2011).

The Wiki Leaks cable from US diplomatic staff in South Africa to Washington which was released August 24, 2011 also reported proceedings of a meeting which took place in Cape Town in March 2008 attended by officials of SAPO (now Transnet Port Terminals (TPT)), NPA (now (Transnet National Port Authority (TNPA)) and the Council for Scientific and Industrial Research as well as the maritime industry.

It quoted a comment by the Council's Emma Maspero saying “Transnet's financial situation provides a disincentive for the South African Government to fully implement the changes recommended in the National Ports Authority Bill” (Business blasts Transnet plan, 2011).

Billy Cilliers, the Ports Authority's Manager for Planning and Port Development concurred that the NPA was the cash cow for Transnet and its transfer to an independent authority would entail a difficult transition for Transnet. He further noted that no other country had a port authority or operator structured similarly to South Africa's (Business blasts Transnet plan, 2011).

In the chamber's letter, Michael Bagraim, its President, said: "Port tariffs for container imports and exports are already more than double the average of a selection of 12 ports in various parts of the world, according to Mihalios Chasomeris in his benchmarking study, Port Pricing in South Africa" (Business blasts Transnet plan, 2011).

"Tariffs in Durban [and other South African ports] were roughly three times as high as tariffs in Rotterdam, four times the tariffs in New York and five or six times the tariffs for the port of Antwerp" (Business blasts Transnet plan, 2011). According to the Chamber, there was a clear case for a phased reduction in charges to bring them in line with those of most ports in other countries (Business blasts Transnet plan, 2011).

Transnet in December 2011 held discussions in Port Elizabeth with automotive sector customers where it pronounced a plan to work with its customers to establish a tariff structure that would yield a mutual benefit for all parties. The group further insisted that it did not want to endanger its balance sheet (Buthelezi, 2011a: 15).

According to Transnet Chief Executive Brian Molefe, it made sense for Transnet to fund its capital expenditure from fees rather than relying on borrowing. Nevertheless, Molefe assured customers that the company's profit would be reinvested into the infrastructure to facilitate the movement of products (Buthelezi, 2011a: 15).

(In this section we clearly see the preference of Transnet which is to retain the ports within its group in order to extract profits. On the other hand, there seems to be a turn of events. All of a sudden, Transnet is planning on changing the tariff system to benefit all parties—not just the commodity exporters (see Box J, Row, 3).

Section 4.2.2.4: President's State of the Nation Address—Game changer.

In February, 2012, President Jacob Zuma announced Government's massive infrastructure plan in his State of the Nation address. Within his speech, he said that the Government had been looking to reduce port charges as part of reducing the costs of doing business in South Africa (Zuma Details Massive Infrastructure Spend, 2012).

"The issue of high port charges was one of those raised sharply by the automotive sector in Port Elizabeth and Uitenhage during my performance monitoring visit to the sector last year," he said (Zuma Details Massive Infrastructure Spend, 2012).

"In this regard, I am pleased to announce that the Port Regulator and Transnet have agreed to an arrangement which will result in exporters of manufactured goods, receiving a significant decrease in port charges, during the coming year, equal to about R1 billion in total" (Zuma Details Massive Infrastructure Spend, 2012).

The shipping companies welcomed a tariff increase of 2.76 per cent approved by the Port Regulator for 2012 to 2013 financial year (West, 2012: 2). According to the Port Regulator, 2.76 per cent was reasonable after considering various submissions from stakeholders. South African Association of Ship Owners CEO Thato Tsautse and Mediterranean Shipping Company CEO Captain Salvatore Sarno were among the shipping companies that expressed their gratitude about the low tariff increase (West, 2012: 2).

Tau Morwe, TNPA chief executive, speaking at the Western Cape Exporters Forum in April 2012 said that the initial idea was for the rebate to last until Transnet came up with a new pricing strategy for port tariffs (Buthelezi, 2012: 17).

"But if it can have a positive effect on job creation, it won't be a once-off," Morwe said (Buthelezi, 2012: 17).

However, Molefe of Transnet did not mention whether bulk exporters would face larger tariff increases than they had in the past (Buthelezi, 2012: 17). Dick Kruger, an economic adviser to the Chamber of Mines, in response to this, said that the chamber would oppose any unilateral increases in tariffs for raw exports as bulk commodities still

remain strategic to the country and form a massive part of gross domestic product (Buthelezi, 2012: 17).

(From this section we see a huge change in South Africa's port price saga. The exporters of value-added products finally see the reversal of the earlier cross-subsidisation regime after over 50 years (see Box I, Row 1). We also see opposition from exporters of raw materials (see Box J, Row 4)).

Section 4.2.2.4.1: TNPA Proposal for a New Tariff Structure September 2012.¹⁰ In September 2012 TNPA conducted a study and proposed a new tariff structure for the ports. The tariffs structure used at the time was developed as part of the price rebalancing of 2002 and had not been updated since (TNPA, 2012). The TNPA acknowledged that the tariff structure presented several issues and embarked on a redesign exercise. Two key issues related to the tariff structure were summarised in the tariff proposal as follows:

1. "Lack of explanation for differential tariffs for different commodities using the same handling classification;
2. Lack of information detail with respect to services or facilities pricing and cost relationships, which made it impossible to determine where and in which direction subsidisation took place or if it did not" (TNPA, 2012).

Furthermore, the real estate business of TNPA was excluded from the tariff structure, which therefore did not encompass the entire business of TNPA. As a result of these issues, the tariff structure presented several imbalances in the determination of the various tariffs, including:

1. " Very high tariff levels for cargo dues resulting from the migration from the old wharfage charge, which was calculated on an ad-valorem basis depending on the value of the cargo;

¹⁰The information in this section was extracted from Transnet National Port Authority Proposal for New Tariff Structure 2012.

2. Very high differentials in the levels of cargo dues for different cargo types and commodities with no clear motivation for the differences;
3. Relatively low tariff levels for maritime services, which are based on an activity-based costing exercise conducted during the tariff rebalancing of 2002 and that has since not been updated, resulting in the subsidisation of some services;
4. Very low levels of revenue from the real estate business as compared to other landlord port authorities across the world” (TNPA, 2012).

The new proposed tariff structure aimed at addressing these imbalances through providing a robust methodology, which was based on a clear set of principles, to determine the optimal levels for the various tariffs. The motivation behind the tariff proposal also included the proposed promotion programme for export of value-added goods which stressed the alignment of the tariff structure with Government priorities through direct support to the key objectives of industrialisation and job creation (TNPA, 2012).

In October of 2012, TNPA asked for 5.4 per cent average increase in port tariff application for 2013-14 financial year (Hutson, 2012). This request was considered surprising in that the year before the company had asked for 18.6 per cent.

Another surprise was that TNPA in its application, asked for a reduced tariff of 43.21 per cent on all export containers and 14.33 per cent decrease on imported boxes (Hutson, 2012). If granted, this would surely benefit cargo owners more especially in the agricultural sector making containers used for export commodities such as fruit and wine being one of the big winners (Hutson, 2012). Another winner would be the manufacturing sector as would be the motor industry where the TNPA had applied for a 15.71 per cent reduction on motor vehicle exports (Hutson, 2012).

According to TNPA, unlike other international ports, it has to recover its capital investments on administering, operating and owning the ports while also being required to make a profit commensurate with the risk of owning and operating such a business.

Many ports elsewhere in the world are capital funded by the state or municipal budgets (Hutson, 2012).

Aside from port tariffs, cargo owners have to bear costs of terminal tariffs which do not come before a port or the regulator—an anomaly of the Ports Act. These tariffs are applied by TNPA or private port terminal operators without the consent of the Port Regulator or the Minister of Transport (Hutson, 2012).

The Ports Regulator called for comments on the proposed port tariffs and held a series of meetings to which port users and interest parties were invited. In November, the Eastern Cape motor industry which is a major user of the ports for vehicle exports rushed to submit a response on how badly a port tariff hike would affect the company (Hayward, 2012: 7).

According to Tau Morwe CEO of Transnet when speaking to Parliament's Trade and Industry Committee, the new port pricing system would see cargo dues significantly reduced but it would also see terminal operators and other port tenants pay rentals nearly double what they were paying at the time (Hayward, 2012: 7). The new rate was based on a user-pay system, which charged businesses non-subsidised rates for upgraded facilities (Hayward, 2012: 7).

(This section shows us an interesting twist to the port tariff request by Transnet. What we see here is a likely significant reduction of cargo dues for industrial users (see Box I, Row 1) but at the same time, Transnet asks for a 5.4 per cent average increase at the ports (see Box J, Row 3). The next section shows the outcome of the 2013 port tariff rebalancing).

Section 4.2.2.5: Implementation Finally —Port Pricing aligns with the Industrial Policy

By March, 2013 the Ports Regulator was to announce the new tariffs structure which was to include the reduction of more than 40 per cent in the tariff on exported containers (Azzakani, 2013). This was part of the TNPA strategy to reduce South Africa's port charges which were among the highest in the world. The announcement was made during a colloquium on the impact of administered prices on the manufacturing sector.

In addition to the new tariffs the NPA was to propose a reworking of its tariff structure which would see higher charges for bulk commodities of up to 68 per cent (Azzakani, 2013). South African port tariffs were at least 8.7 times more than the global average for containers and 7.4 times the global average for automotive cargo (Azzakani, 2013). The Department of Trade and Industry Director-General, Mr Lionel October, welcomed the expected tariff reduction, and said that it would be a major boost for exporters (Azzakani, 2013). He believed the advantages would be extended to agriculture and agro-processing (Azzakani, 2013).

Gert Schoeman, spokesman of Kumba Iron Ore which transports its ore from Sishen to Saldanha, opposed the tariff changes and stated that the company had a long-term agreement with Transnet governing the export of iron ore. This agreement according to Schoeman determines the tariffs they pay and provides a mechanism for adapting these annually; therefore, the tariff changes would have to be discussed in the context of this agreement (Pressly, 2013: 17).

Molefe expected the mining sector to object to the plans of hiking tariffs on dry bulk cargo by more than two thirds and in his defence mentioned that the sector had been hugely subsidised by a tariff structure which favoured the sector at the expense of agricultural produce and manufactured goods (Pressly, 2013: 17).

Defence Alliance (DA) trade spokesman, Geordin Hill-Lewis mentioned that there was a danger that the hike on raw commodities would “kill the goose that lays the golden eggs” although Molefe suggested that these hikes would only be phased in by 2019 (Pressly, 2013: 17).

Rob Davies, Trade and Industry Minister said that his department had been concerned about the structure of export tariffs which had been a disadvantage to manufactured exports. He further mentioned that what was being proposed was a move in the right direction and supported a tariff structure that did not cross-subsidise primary products’ export through higher charges on value added goods (Pressly, 2013: 17).

In April of 2013, the manufacturing industry finally won the battle to reduce port costs. The Port Regulator announced that all container export tariffs would be slashed by 43.2

per cent, container imports by 14.3 per cent and vehicle export tariffs by 21.1 per cent (Wilson, 2013: 6).

Molefe said that the shift in tariffs was part of the Government's economic policy and National Development Plan and highlighted that the TNPA overall port tariff revenue would not be hindered as adjustments in other sectors would make up for the price cut (Wilson, 2013: 6).

After 17 years port tariffs had finally aligned with the Government's trade policy which stressed the need for an export-led industrialisation.

Section 4.2.3: Interim Conclusion

In this chapter we have witnessed the efforts to reform port pricing in South Africa. The chapter has revealed much more explicitly into the picture we had before, both in terms of the role of the mines as well as the issues of complexity in pricing as seen in Hypothesis 4 and Hypothesis 6 from Chapter 1, Section 1.2. In line with H4, we have observed in this Chapter that the pricing at the ports was not understood by the players. If this were otherwise, the industrial users would have insisted that pricing reform took place much earlier. Instead, they simply asked for lesser tariff increases than proposed by Transnet. Therefore, strong evidence is provided here that complexity of the pricing added to the difficulty of pricing reform. This Chapter also offers strong support for H6 in terms of the mines. Evidently, the mines were opposed to tariff reform as this process took away the subsidies they enjoyed for over 50 years. Further elaboration on this and all the other hypotheses is provided next, in the concluding chapter.

CHAPTER 5: CONCLUSION

The port reform process in South Africa has been very slow. This is evidenced by the slow process of establishing the white paper in 2002, ports act in 2005 and pricing reform in 2013 when the change in industrial policy took place in 1996. Chapters 3 and 4 introduced us to the stakeholders involved in the port reform efforts and the roles each played in the restructuring process. Through 'deduction and induction' this chapter revisits the hypotheses from Chapter 1, Section 1.2 and tease out the implications of each in the light of the two chapters.

The Hypotheses

<u>GROUP 1: Multiple Principals Hypothesis</u>
H1: Multiple principals as well as capture by strong SOE (Transnet) leveraging allies blocked reform.
<u>GROUP 2: Technocratic Hypotheses</u>
H2: Private participation and price rebalancing is bad policy.
H3: Failure to reform is as a result of poor management.
H4: Complexity and non-transparency of the pre-existing pricing and cross-subsidisation regime added to the difficulty of reform efforts.
<u>GROUP 3: High-level Politics Hypotheses</u>
H5: Labour unions have veto within the ANC alliance and therefore opposed private participation and successfully blocked reform.
H6: Economic actors were resistant to productivity focused restructuring (Mineral Energy Complex and the unions) and have veto power.

Analysing these hypotheses one by one, it is seemingly clear from the way port reform played out in South Africa that we can unequivocally reject *H2: Private participation and price rebalancing is bad policy*; on the basis that Colombia and Argentina successfully introduced private participation and price rebalancing to their ports. We can also reject *H3: Failure to reform is as a result of poor management*; on the basis that at a high-level, the Departments of Transport and Public Enterprises were very clear in detailing what needed to be done to restructure the ports and these Departments pushed hard

and consistently for reform to be achieved. It is on this basis that we can therefore reject H3.

In analysing *H1: Multiple principals as well as capture by strong SOE (Transnet) leveraging allies blocked reform*; Chapters 3 and 4 show strong evidence which supports this hypothesis as these chapters illustrate how Transnet repeatedly and successfully managed to block port reform in South Africa. As seen in Chapter 3, Transnet was cleared of its pension debt in 2000, offering it an opportunity to proceed with port reform; yet the enterprise preferred to act in contradiction to the efforts of its principals throughout the reform process. Further analysis of the governance structure of Transnet would give us a deeper understanding of the specifics in terms of the alignment of multiple principals of Transnet which have different objectives from one another; but such analysis goes beyond the scope of this dissertation.

H5: Labour unions have veto within the ANC alliance and therefore opposed private participation and successfully blocked reform; presents some elements of truth as evidenced in the process tracing exercise of Chapters 3 and 4. The chapters reveal that labour unions do have veto power and opposed private participation in the ports although in 2003, the unions made an agreement with the Public Enterprises Minister which signalled that the Government could go ahead with concessioning the ports without contestation from the unions. This hypothesis is supported in both chapters as it has some elements of truth but is mixed in terms of the agreement made between the unions and the Minister.

H6: Economic actors were resistant to productivity focused restructuring ('Mineral Energy Complex' and the unions) and have veto power; is supported in Chapters 3 and 4 as we learnt from process tracing that the unions were against reform although they seemed to have been bought off by the Public Enterprises Department. Given the losses, the mines were surely "opposed" to reform as is evident in the process tracing. As we observed in Chapter 4, the mines' argument was that raw bulk commodity exports continue to form a massive part of gross domestic product and increasing tariffs

on these commodities would “kill the goose that lays the golden eggs”. Furthermore, these exporters enjoyed subsidised tariffs for over 50 years, and as evidenced, were reluctant to reform pricing although, there is no way of telling how decisive they were in relation to the unions just by analysing their opposition.

It is clear that Transnet, labour and the mines were all opposed to reform but the evidence strongly suggest that each of them individually, may not have been able to block port reform. After going through all the hypotheses, we have unequivocally rejected **H2** and **H3**. As for **H1**, there is strong evidence that Transnet is an SOE that is repeatedly acting in contradiction to the signals from its formal principals Departments of Public Enterprises and Transport. This concept of an SOE having multiple principals is argued by (Aharoni, 1982 cited in Levy, 1986: 77) as below:

“The notion that the government or the minister is the principal and that the enterprise is the agent is misleading The state is not a person, not even a single organisation. It acts through a variety of ministers, legislators and civil servants who are themselves agents of the general public. These different agents invariably see their mission as different from one another. Their goals are rarely, if ever, stated explicitly and trade-offs among them are not agreed. Thus different agents give the enterprise conflicting parallel commands...’

In considering **H5** and **H6**, we have introduced other stakeholders of reform; labour and the mines (‘Mineral Energy Complex’), and we have learnt from the process tracing that they both opposed port reform. **H4: Complexity and non-transparency of the pre-existing pricing and cross-subsidisation regime added to the difficulty of reform efforts** is supported by the process tracing in Chapter 4. The narrative does not provide us with any sign that the industrial port users understood the port pricing system. Instead of requesting lesser increases on proposed tariff increments by Transnet, they certainly should have expressed the need for a port pricing overhaul because clearly the pricing system at the ports was astonishingly flawed. The startlingly misdirected quality of the criticism and debate appears to suggest that the basic dilemma was not understood by

the players due to the complexity of pricing and cross-subsidisation. Therefore, this hypothesis provides a contributing feature to the reason why port reform played out this way in South Africa.

In conclusion, the process tracing suggests that **H1** is the dominant hypothesis and the dominant explanation has to do with the unequivocal evidence of Transnet working as a powerful autonomy seeking public enterprise in pursuit of stronger financial performance. However, a complete story needs to pay attention to the influence of high level politics presented in **H5** and **H6** as well as the issue of complexity as addressed in **H4**. Analysis of these high-level politics goes beyond the scope of this dissertation.

Transnet's goal to maximise rents for stronger financial performance was to cross subsidise to loss making divisions of the transport enterprise. To understand why these losses existed in the first place would require an analysis of Transnet's debt stemming from its predecessors. Again, this goes beyond the scope of the present dissertation.

Notwithstanding the 17 year veto's, in 2013, there appears finally to be a decisive reversal. In looking this through, paraphrasing from Martin Luther King one might want to believe that the ark of policy reform is slow, but bends towards social gains. Although, looking at the narrative from 1996 to 2012, there is no evidence of hope. However, 2013 suggests that perhaps and for reasons that are beyond this dissertation in the long run that may not be true.

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